(XXVIIIth YEAR.) THE (Nº. 1461.)

MARYLAND GAZETTE.

THURSDAY, SEPTEMBER 9, 1773.

To JOHN HAMMOND, ESQUIRE.

SIR,

YOUR communicating in print the grounds and reasons of the opinion, you have entertained in favour of the proclamation, has laid us under a neceſſity of making this addreſs to you. If you are wrong, and we think you are, it would be a happineſs beyond our expectation to work ſuch conviction upon your mind, as to induce you publickly to retract your opinion; yet we flatter ourſelves with the hope, that an attempt to prevent others being miſled by the indigeſted learning, which hath bewildered you, will not prove altogether unſucceſsful. Freedom in enquiry and opinion we hold with you a natural right; and therefore the terms——"cavilling and quirking ſons"——"ſelfiſh and deſigning men"——"the ſowers of ſedition and diſcord"—"ſtate-lawyers who puſhed forward this publick reſolve for the promomotion of their own private gains," applied to thoſe, who differed from you in ſentiment, are intemperate. Thoſe men, whom you thus inſult in outrageous terms, have been as ſtrait forward and uniform in their conduct, as little deſerve your groundleſs imputations, and have ſacrificed as much of their private gains, as yourſelf. But, Sir, in order that the true queſtion may fairly be kept in view, and the reaſoning on either ſide may be fully comprehended and compared, we not only intend to wave any unneceſſary notice of the very exceptionable language, you have frequently made uſe of, but propoſe to lay aſide, as uſeleſs, in the preſent diſcuſſion, the graces and ornamental parts of your piece,—your partial ſtate of the treatment you received on the day of the Anne-Arundel election,—your confutation of what, you eſteem a frivolous charge againſt yourſelf in the letter of it, though the ſubſtance ſeems not to be denied by you——as well as your ſcraps of plays and ends of verſes——A parade of learning may make fools gape and ſtare, but cannot convince the underſtanding of any ſenſible man; equally foreign too is it to the queſtion, whether you, who appear an advocate in favour of the proclamation, do ſo on the fulleſt conviction of the propriety of it, or whether thoſe, who have oppoſed it, have done ſo from intereſted or ſelfiſh motives——The legality of the proclamation muſt be tried by a different ſtandard, the conſtitution and laws of our country.

Neither you, or any other advocate for the proclamation, have explicitly and fully ſtated the extent of it, argument may be endleſs unleſs its extent is firſt ſettled.——You ſay that the governor's proclamation is, "with reſpect to the officers, who are declaredly the objects and only objects of it, conſtitutional, legal, beneficial to the people, and obligatory on the officers, to all intents and purpoſes whatever"——Again—the proclamation "was conſtitutional, legal, beneficial to the people in whoſe behalf it was made, and obligatory on the officers who were the objects of it, to all intents and purpoſes whatever"——Again—"how the people came to be alarmed, and ſuch clamour raiſed againſt a meaſure moſt manifeſtly calculated to promote their intereſts if they were inclined to take advantage of it, as moſt of them amidſt their complainings have done, and without which they neither are actually or intentionaly the objects of it; nor are nor can be immediately or remotely affected by it, might eaſily be diſcloſed"——Again—"I have ſaid juſt above, that the people were not declaredly the intentional and actual objects of the proclamation; I here ſubmit this point (as much depends upon it) to the determination of the publick"——Again—"If the proclamation hath afforded theſe advantages to the people, no leſs beneficial hath it proved to them in removing all grounds of litigation and conteſt between them and the officers, which muſt have inevitably enſued from the different rates each would be inclined to annex to the ſervice performed by the latter"——Again—"Is it for the good of the people that endleſs litigation ſhould be prevented having any foothold among them? if it is, and I gueſs it will not be denied but by a few, then it follows that the proclamation, &c. by eſtabliſhing the moſt eaſy and equitable rates of fees that ever prevailed in our province, ſtopped the career of ſuits among us;" "fees being incidental to, or as ſome chuſe to call them, the perquiſites of office, are conſtitutionally and properly rateable by the ſame or like authority that eſtabliſhed the office and appointed the officer;" "fees are not taxes, or taxes fees, &c." "nay, theſe conſiderations have, I truſt, ſhewn ſomewhat more, in whom the conſtitutional right and power of regulating the fees of office doth reſide, and by whom it is to be exerciſed on fit and proper occaſions;" "the proclamation which regulates the fees of officers with us, hath not by its context or import the leaſt tendency to lay a tax upon the people, it leaves them juſt as they were before it iſſued, as to any compulſory charge or payment to be enforced from them;"——from theſe extracts, already too long, and others, which might be made from your piece, your idea of the proclamation ſeems to be in no wiſe ſettled or preciſe.

If your conſiderations have ſhewn, "in whom the conſtitutional right and power of regulating the fees of office doth reſide, and by whom it is to be exerciſed on proper occaſions; if your conſiderations have ſhewn, that fees are "conſtitutionally and properly rateable by the ſame or like authority that eſtabliſhed the office and appointed the officer;" if the proprietary eſtabliſhed the office and appointed the officer; if the proclamation hath proved beneficial to the people, "in removing all grounds of litigation and conteſt between them and the people, by eſtabliſhing the moſt eaſy and equitable rates of fees that ever prevailed in our province;" if the proclamation regulates the fees of officers, how incongruous are theſe propoſitions to your aſſertions, that "the officers were the ſole objects of the proclamation to all intents and purpoſes whatever;" "that the people neither are actually or intentionally the objects of it, nor are nor can be immediately or mediately affected by it;" "that the proclamation leaves the people juſt as they were before it iſſued as to any compulſory charge or payment to be enforced from them." It is true, the officers are the declared objects of the proclamation, but no ſound concluſion can be drawn from thence, that the people are not both actually and intentionally the objects of it, or that they are not nor can be affected by it. If fees are rated, regulated and eſtabliſhed by legal and conſtitutional authority, ſuch rating regulation or eſtabliſhment creates a legal obligation on the people to pay according to thoſe rates, and thus and only thus can all grounds of litigation and conteſt between them and the officers be removed; it is abſurd in terms, and can only flow from a confuſion of ideas, to ſay a right can be given to an officer to have, demand, receive or take, and no obligation on the people to render, pay or ſatisfy. The extent of the proclamation, however, yet remains unſettled. You find fault with the motive and deſign attributed to it, and contend the terms made uſe of in that inſtrument are ſo plain and explicit in themſelves, as to leave no room for conſtruction; if every proclamation made for the publick good is a legal and conſtitutional proclamation, founded on undoubted prerogative; and if, when the proclamation itſelf ſuggeſts the publick good, as the motive, end and deſign of it, the ſuggeſtion is to be complaiſantly taken for truth, perhaps no proclamation, which ever was, or would be iſſued, would want undoubted prerogative for its foundation. No apology is neceſſary for the ſtricteſt examination of the rightfulneſs of powers exerciſed by government; our conſtitution is jealous and diſtruſtful; hence the various and mutual checks and controuls wiſely contrived by our conſtitution, and hence it is, that we have repreſentatives at all. Fearing no doubt, that your readers ſhould not otherwiſe be poſſeſſed of the true ſenſe of the proclamation, you have followed the beaten traſt of inſerting it, at large, in your piece, though the regulation of fees in the land-office, which is referred to in it, and is, as we apprehend, a part of the ſame govermental act, hath been omitted—The defect is ſupplied by an inſertion of the following copy—"Frederick abſolute lord and proprietary of "the province of Maryland and Avalon, lord baron "of Baltimore, &c. For the aſcertaining what fees "and perquiſites may and ſhall be taken and received "by our judges and regiſter of our land-office, for "their own uſe and benefit, we do think fit, and accordingly declare it to be our will and pleaſure, "that our ſaid judges and regiſter, ſhall have, receive and take the following fees and perquiſites "hereunder written, to their own uſe and benefit. "Witneſs our brother Robert Eden, Eſq; governor "of our ſaid province of Maryland, and chancellor "and keeper of the great ſeal thereof. Fees and perquiſites allowed, &c. N. B. The above fees, if paid "for at the time of performing the ſervice, may be "diſcharged in money, at the rate of twelve ſhillings "and ſixpence currency for every 100lb. of tobacco; "and if paid in inſpected tobacco, 10 per cent. to be "diſcounted for convenience."

The expreſs affirmative terms of this declaration, or regulation, need no comment. The lower houſe in their addreſs, November ſeſſion 1771, contend the land-office is a publick office, amongſt other reaſons they urge—"the land office, Sir, is the publick repoſitory of the firſt and moſt neceſſary evidence of "every man's title to his real eſtate in this province; "the whole records have been made up, ſo far as we "can trace, at the expence of the people; theſe records have been conſidered as publick records, kept "under ſecurities by acts of aſſembly, and office copies are conſtantly received and admitted as evidence "by the courts of juſtice." To which the governor anſwered—"ſo far as it (the land-office) is the repoſitory of the muniments of his (the proprietary's) tenants eſtates, it is a publick office, and all the people of Maryland are entitled to have acceſs to it, "as well as to the other offices, &c." Thus by the conceſſion of the governor, the land-office, as to the records kept there, ſtands in the ſame predicament of other publick offices; for the ſearches and copies of which records, by his regulation or declaration, the judges and regiſter ſhall have, receive and take the fees and perquiſites therein mentioned. However you may effect to deſpiſe the addreſs of the late lower houſe, you nor any advocate for the proclamation have attempted, by fair argument and deduction, to controvert the propoſition, that the neceſſary conſtruction of the proclamation, with regard to the other officers, is an affirmative allowance to receive the quantums regulated by the late inſpection law; in ſupport of the propoſition the lower houſe argue—— "when your excellency authoriſed the regiſters of the "land-office to receive the reſpective quantums enumerated in your inſtruction to them, and which "were allowed and limitted by the late regulation, "without an expreſs prohibition againſt receiving "more; we fairly preſume, that you meant an allowance of ſo much, and an implied prohibition to "take more; for we cannot ſuppoſe you intended "thoſe officers ſhould be juſtified in receiving ſo much, "and as much more as they could extort. And when "your excellency by your proclamation prohibited "the officers from taking other or greater fees than "limitted and allowed by the late regulation, you as "certainly muſt have meant a prohibition againſt "taking more, and an implied allowance of ſo much; "beſides, ſo much by your proclamation is not extortion, and therefore on this ſuppoſition may be demanded and taken &c. On recurring to the late inſpection law which limitted the officers fees, we find "that the words of that act are, that no officer or officers hereafter mentioned in this preſent act, their "miniſters, ſervants or deputies, by reaſon or colour "of his or their office or offices, ſhall have, receive or "take, of any perſon or perſons, directly or indirectly, *any other or greater fees*, which ſhall become due "after the laſt day of November, in the year 1763, "than by this act are hereafter limitted and allowed "to the ſeveral officers hereafter mentioned; which "expreſſions every body knows have always been conſtrued an implied affirmative allowance of ſuch fees; "and when your excellency has been pleaſed to iſſue a "proclamation in the very ſame words, we cannot but "conclude, you muſt have had the ſame idea affixed "to them, as was univerſally affixed to thoſe words in "the act from whence they were copied." To which may be added, that the proclamation of 1733, oppoſed by the repreſentatives of the people as illegal, and attempted to be juſtified by government as a legal regulation of fees, was conceived in the ſame terms; and an act of parliament allowing poundage fees to ſheriffs in nearly the ſame terms, has met with the like conſtruction in the king's-bench (Mo. Ca. 1166.) But it ſeems your ſcrupulous regard to gentility will not ſuffer you to make or allow ſuch conſtruction; for the law, ſaith Lord Coke, will not make an expoſition againſt the expreſs words and intention of the party; yet the governor himſelf writes, "for the very purpoſe of regu- "lating the conduct of the officers in the article of "their fees, to point out to them what they *might*, "and beyond which they *ſhould not* demand, I iſſued "my (ſhadowed as you call it) proclamation, &c."—Is it conceivable, Sir, that the governor and council ſhould alone be ignorant of the ideas affixed to the terms made uſe of in the expired acts, or the former proclamation, that they ſhould all be ignorant of the conſtruction on the ſtatute above mentioned, or that any of them ſhould be ſo ignorant of the common and ordinary import of terms, as that when *no other or greater* are allowed, ſo much is underſtood to be allowed? Does not the practice under the proclamation juſtify the conſtruction? or do you know of any officer who does not charge fully up to the rates? again, what does the proclamation forbid as extortion? the exaction only of fees beyond the regulation. Does not the right to demand extend as far as the limits of extortion? can extortion be aſcertained without aſcertaining the *exact compenſation*? "a right to determine the fees charged were exceſſive, writes his excellency, implies the right to ſettle the *exact compenſation* due for the ſervices performed, becauſe without the ſtandard, what fees are adequate, what are more or leſs than the juſt proportion, cannot be aſcertained." Where then is there any breach of good manners, in advancing or maintaining the propoſition, that the neceſſary conſtruction of the proclamation, with regard to the other officers, is an affirmative allowance to receive the quantums regulated by the late inſpection law?

If the extent of the proclamation is thus ſatisfactorily fixed, as we think it muſt be, we apprehend that proclamation "unconſtitutional in the matter and "ſhadowed (let the term be carped at as much as it "may) in the manner with the aſſigned reaſon to prevent extortion by the officers, in imitation of the "practice of arbitrary kings, who in their proclamations, which have been declared illegal generally "covered their deſigns with the ſpecious pretence of "publick good.

A ſhort review of the aſſembly proceedings in 1770, may not be uſeleſs in the inveſtigation of this ſubject. The inſpection law, which contained a regulation of the ſtaple, clergy's dues, and officers and lawyers fees, was in the year 1769 continued only till the 1ſt October, 1770, with deſign, when more time could be conveniently ſpared, to review the tables of fees, and examine the practice of charging under them; the aſſembly met the 25th September, 1770; the lower

houſe entered on the review and examination deſigned. The inſpection law was continued till the 20th October, to give time for it; on that review and examination the lower houſe thought the then regulation, in ſome particulars, exorbitant, and that many great abuſes had been committed by the officers in their charges, which could be palliated only from the doubtfulneſs of the expreſſion in the tables; amongſt which were charges for ſervices never performed. A bill therefore was framed including a regulation of the ſtaple, clergys dues, and lawyers fees, and new tables of officers fees, moderating the allowances, in a few inſtances, where they were thought outrageous, attempting to cut off all pretence for thoſe charges, which were thought to have been improperly made, and (not much in favour of the private gains of *ſtate* or any other lawyers) giving liberty as well to planters as others to pay off at 12/6. The bill failed, and though the planters are now ſo much obliged to government for the liberty of paying off at 12/6, a higher medium was then inſiſted on. From ſome proceedings carried on in the land office, the lower houſe ſuſpected a deſign in government to iſſue a proclamation for fees; a ſhort prorogation took place; the aſſembly met, and the bill was ſent up again; the alternative was fixed at 12/6; the clergys dues were ſettled; there was no diſpute about lawyers fees; moſt of the particulars, on which the two houſes had diſagreed in the regulation of the ſtaple, were alſo ſettled, the ſettlement of officers fees was not effected. In general, the upper houſe contended for the old tables, the lower houſe was extremely averſe to them; the inſpection law was loſt, as we apprehend, on the very point. A cautionary addreſs to the governor againſt iſſuing any proclamation for fees was prepared and delivered to him; the aſſembly broke up the 21ſt; the declaration or regulation of fees in the land office iſſued the 24th, and the proclamation the 26th November, 1770, rating the fees in tobacco diſchargeable in caſe of immediate payment in money at 12/6.

You aſk "was it or was it not for the good of the "people to be indiſcriminately allowed to diſcharge "their fees of office in caſh or tobacco at their option? "and that the planter ſhould ſtand on the ſame fair "and equal footing with the farmer and be privileged "to pay the officer his dues in money at the rate of "12/6 currency for every 100lb. of tobacco, owing by "him?" To be ſure, Sir, it is for the good of the people, that they ſhould indiſcriminately be allowed to diſcharge the fees of office in money, and common juſtice requires, that the planter ſhould ſtand on the ſame fair and equal footing with the farmer. But are the people indebted to the proclamation for it? Were the officers, after the fall of the late act for limitation of fees, intitled by any *ſubſiſting law* to charge any perſon in *tobacco*? However the great good to the people in general, and the boaſted indulgence to planters in particular, may be blown up in a looſe and curſory way, we are not apprehenſive, that you will pointedly pronounce, that independent of that proclamation the officers would have a right to recover tobacco, or any thing elſe other than money, "the "univerſal medium or common ſtandard, by com"pariſon with which the value of all merchandizes or "all ſervices may be aſcertained." When the late act expired, the fees of office, and the mode of payment eſtabliſhed thereby, fell with it; that diſparity in payment became extinct, and the planter and farmer ſtood upon an equal footing. The officers of government could only claim an equivalent in money for their ſervices, the quantum of which, in caſe of conteſt, to be conſtitutionally decided by a jury; nor would any jury upon earth, deciding upon the principles of natural juſtice, was it in their power, give a verdict, upon actions brought for ſimilar ſervices, againſt the planter for tobacco, and againſt the farmer for money, when the verdict in tobacco would perhaps double or even treble a verdict in money. No man can be alarmed with ſuch an apprehenſion. The alternative, therefore, offered in the proclamation, which you boaſt ſo much of, is an inſulting affectation of kindneſs to the people; becauſe it conveys the idea of protection to the planter, in the reſtriction of officers from tobacco demands, when in truth no ſuch tobacco demands ſubſiſted, and conſequently no ſuch protection was wanted or required. Yet ſuppoſe the officers, independent of the beneficent proclamation, would have had a right to charge and compel the planters to pay their fees in tobacco, what great alteration does the proclamation work? The eaſe of diſcharging the fees at 12/6 by either the tobacco or non-tobacco-maker is confined to the caſe of *immediate payment*: immediate payment for buſineſs tranſacted, in the times of the ſittings of the courts, is in moſt inſtances impracticable; ſo that if the planters in general feel any eaſe from the unjuſt diſtinction, they long and patiently ſubmitted to under the legal regulation, and which it ſeems according to your idea, and contrary to ours, would have been continued notwithſtanding the expiration of that regulation, it flows from the courſe of buſineſs and indulgence of the officers, and not from the tender proviſions of the proclamation.

Is the proclamation unconſtitutional in the matter of it? You attempt to prove it legal, and it ought to be proved ſo, elſe it's unconſtitutionality follows as a conſequence; for as our conſtitution is founded in compact, no authority belongs to government, but what has been granted to it; all other power reſts in thoſe, from whoſe grant all rightful power is derived. You contend for the legality, the expediency, nay the neceſſity of this proclamation, from authorities of law, the charter, the principles laid down by Mr. Locke, and the circumſtances of the province.

As to the circumſtances of the province, the true ſtate of the fact will evince that nothing can be claimed from that of the time of iſſuing the proclamation, there was no ſudden and unforeſeen emergency; a regulation of officers fees had been diſcuſſed between two branches of the legiſlature, the circumſtances of the province conſidered and deliberated on, and the old regulation refuſed by a component part to be continued; rather than continue which, the repreſentatives ſubmitted to the loſs of the regulation of the ſtaple; the ſenſe of the lower houſe againſt the meaſure was fully and conſtitutionally made known to the governor.

But you are of opinion, that a failure of juſtice would have reſulted "had not the prerogative of "proclamation happily interpoſed by the governing "power in this emergency of our province to give re"lief." Your opinion is taken up upon a ſuppoſition, that the ſeveral acts of 1715, 1716, and 1731 requiring ſecurity for the payment of officers fees, and obliging the officers to make out their accounts in a fair legible hand, could not, without the interpoſition of the proclamation, be complied with. But, pray Sir, Why not? Who queſtions the right of the officers to a compenſation for their ſervice? Why not then, in execution of the above acts, give ſecurity for the payment of that compenſation, when conſtitutionally aſcertained in caſe of a conteſt, as well as give bail in any action on the caſe where a jury are to liquidate and aſſeſs damages? And what ſhould prevent the officer from making out his demands in a fair legible hand? Perhaps you will reply to carry the above acts into execution, the fees of office ought to be legally aſcertained and reduced to a certainty by an obligatory eſtabliſhment. If ſo, then the proclamation, as to the above acts, was ineffectual and nugatory; for you contend, that the payment of the fees ſettled by it was optional in the people and not obligatory upon them, and that in caſe of conteſt the officer was obliged to take his remedy in a court of law. The payment therefore of the fees ſettled by the proclamation being aſſerted by you optional only upon the party, you would not ſurely oblige him to give ſecurity for the payment of them up to thoſe rates, before he obtains the benefit of proceſs under the above acts. This would be to tell a man, you may or may not pay, but you ſhall pay. Such mockery, Sir, will not do in the adminiſtration of juſtice. But pray, do you know of any rule of law, by which, in caſe a ſupplementary or other act refers to a prior act, either expreſſly or to the matter of it, and that prior act ſhould ceaſe in any manner, government can by proclamation revive or ſet up the expired or void act as a ground work for the operation of the ſupplementary or after act? If there is ſuch rule and the 40 per poll act void, Why might not government to carry into execution the ſupplementary laws eſtabliſh the 40 per poll act by proclamation? But there is no ſuch rule; and therefore if the above acts of aſſembly, from the want of a legal compulſory eſtabliſhment of fees, cannot be put in execution, they muſt ſtill lie dormant notwithſtanding the interpoſition of the proclamation. You ſee, Sir, in the heat of your zeal for the proclamation, you have imputed virtues to it, which upon enquiry do not exiſt.

The proclamation, you ſay was, beneficial too "in "removing all grounds of litigation and conteſt be"tween the people and officers;" and yet you affirm, "it leaves the people juſt as they were before it iſſued "as to any compulſory charge or payment to be en"forced from them:" and "leaves the officer to a "recovery of his reaſonable fee by law againſt the "people." If the people, then, are at liberty to conteſt the fees demanded of them, and the officer is to ſeek for his reaſonable claims in a court of law, how conſiſtent does the aſſertion ſtand, that the proclamation is beneficial in "removing all grounds of litiga"tion and conteſt." With propriety, Sir, you might have ſaid, that the proclamation defeats a legal beneficial conſequence of litigation; the officers, who adviſed it, well knew, that their extravagant charges under the old table would not bear examination before a jury. They foreſaw, that a ſingle verdict might determine the exiſtence of their commiſſions; for an officer convicted of extortion is puniſhable by law with fine, impriſonment, and removal from office. The ſafety, therefore, of their commiſſions and the laudable principle of ſelf-intereſt, may have prompted them to put his excellency upon the project of a proclamation to countenance the exaction of fees according to the practices under the old table. Shielded by ſuch proclamation, what would avail an indictment for extortion? The officer would naturally ſollicit a noli proſequi, could the governor deny it? By an aſſumed authority, he warranted the exaction; with what conſiſtency then could he withhold the means to prevent the puniſhment which the law inflicts:

You ſtumble upon a *reſolve*, which ſeems to give you offence, "that in all caſes where no fees are eſta"bliſhed by law for ſervices done by the officers, the "power of aſcertaining the quantum of the reward is "conſtitutionally in a jury upon the action of the "party." Is this, Sir, law or is it not? If it is law, there is an end of the queſtion. And pray Sir, which is the better ſafeguard againſt the evils and oppreſſions of office, the trial by jury or a proclamation? But the trial by jury, you obſerve, "would multiply law "ſuits" in the community. What would you infer from this? Are you of opinion, that government, under pretence of preventing law ſuits, has a right to ſnatch the deciſion of property from the courts of juſtice and aboliſh the trial by jury? You will not ſurely draw ſuch an inference. "The people and "officers (you ſay) will be left open to perpetual con"teſt about the rate of fees." We think not; a verdict or two would ſilence the moſt refractory; a jury you know, in the aſſeſſment of damages, may make an officer ſmart for his obſtinacy and perſeverance. But to multiply ſuits you aſſert is "greatly to the ad"vantage of our ſtate lawyers who puſhed forward "this publick reſolve for the promotion of their own "private gains." This is a harſh imputation. The gentlemen, you allude to, are as uncorrupt in their publick character as yourſelf. You cannot ſuggeſt a circumſtance to found even a ſuſpicion upon, that they were ever actuated in their publick conduct by ſuch a diſhonourable motive. The man, who fills a publick ſtation ought to act upon impartial, liberal and diſintereſted principles; if he is pliant enough to be borne down by a *bribe* or ſwayed by *private intereſt*, he certainly is a baſe, treacherous and unworthy ſervant. If you have any proofs of your charge, ſo materially affecting the integrity of the gentlemen alluded to, diſcloſe them to the publick. Fix the imputed guilt and mankind will abhor and deteſt them. The "ſtate lawyers," as you are pleaſed to ſtile them, ſo far from entertaining any hopes of promoting their private gains from perpetual conteſts between the people and officers, have often and repeatedly offered their aſſiſtance in the courts of juſtice without any ſatisfaction or reward for it. In the ſeveral ſuits reſpecting clergys dues, they have voluntarily appeared on the behalf of the people and refuſed very liberal fees, which the parties intereſted have generouſly preſſed their acceptance of. When, Sir, they withdraw their promiſed aſſiſtance and will not act without a reward or ſatisfaction, you may then upbraid them with mercenary motives, and impute their publick conduct to ſelf intereſt.

You highly extol the *amiable* motive of the proclamation to prevent extortion in the exaction of fees beyond the old table ſet up and eſtabliſhed by it. You ſeem to have forgot, that the complaints of the people are pointed at the table itſelf; the oppreſſions of office, from whence ariſes the oppoſition, are founded upon the colourable exactions of fees under it. Inſtead of aiding the popular ſtruggle againſt the oppreſſions of office, the proclamation eſpouſes the cauſe of the officers, and adds its weight to ſink down the people. What do the officers contend for? The old table of fees—What do the people object to as oppreſſive and unjuſt? The old table of fees and the abuſes, which had been practiſed under colour of it. What is the regulation eſtabliſhed by the proclamation? The old table of fees. And what is the practice under it? A continuance of the abuſes. What, then, was the *real object* and *intention* of the proclamation? Was it, the *publick good* or the *emolument* of the officers? And yet in the energetick words of the poet you ſay

"It's deſert ſpeaks 'loud, and I ſhould wrong it
"To lock it in the wards of *covert boſom*,
"When it deſerves with characters of braſs
"A forted reſidence, 'gainſt the tooth of time
"And razure of oblivion."——

——Had you really intended a *burleſque* upon the proclamation, you could not have been more happy in a pointed quotation——

"And would the ſilence of the governor &c. have "been productive of the ſame good effects to the peo"ple as his proclamation &c. and which reſtrained "&c. at a time when the old inſpection law that con"tained the rates of fees had expired among us; at a "time when from an unhappy diſagreement between "two of the component branches of our legiſlature "no new table of fees could be ſettled by them; at a "time when in conſequence of this defect in govern"ment and through want of *reſtriction of ſome poſitive* "*law*, the officers were *left at large to riot* with the "property and purſes of every man, that might have "occaſion to do buſineſs in their offices." We have been full in this extract; ſuch a diſplay of legal knowledge is wonderful indeed! But "you would be "gladly informed what other mode of checking thoſe "evils hath the conſtitution of our mother country or "that of our province provided, ſave only that *by pro*"*clamation?*" The law, Sir, replies—a *JURY*. Do you not know, that an officer who riots with the property and purſes of every man, that has buſineſs to do in his office, may by the common law be puniſhed on an indictment for ſuch oppreſſion and extortion; and that the party grieved is entitled to his action to recover back his property, that has been thus wreſted from him? And would not a jury, upon evidence of ſuch riot, compel an officer to diſgorge by an exemplary verdict of damages? Or if the deſigned reward was tendered and the buſineſs remained undone, do you not know, that an action might be eaſily maintained for the recovery of damages? Theſe, Sir, are the checks which the conſtitution has appointed upon the evils of office; theſe are the conſtitutional guards againſt extortion and oppreſſion.

It is inconſiſtent in your argument to ground your juſtification of the proclamation on a *neceſſity* for the interpoſition of government to regulate fees from the peculiar juncture and ſtate of the province, and at the ſame time contend the proclamation is a *legal act*, and the exerciſe of a *legal prerogative*. If it is a *legal act*, and the exerciſe of a *legal prerogative*, it needs no juſtification or excuſe; it defends itſelf, and is within the protection of the poſitive laws of the land, and conſequently the neceſſity communicates no authority. "The preſervation, ſafety and good of the people, "can beſt, nay only be effected and preſerved by main"taining unrelaxed and un-nervated the fundamen"tals of the conſtitution, and as one of the principal "of them, to exclude from the executive, every even "the leaſt degree of legiſlative power, the natural and "neceſſary tendency of which, is to deſtroy the con"ſtitution, and of conſequence to deſtroy the ſafety of "the people." If *neceſſity* is relied on to juſtify the exerciſe of a power, which muſt be confeſſed would otherwiſe be illegal, that *neceſſity* ought clearly to be *certain*, *urgent* and *invincible*; ſuch when the ſupreme authority could not be aſſembled and conſulted time enough to afford a remedy. It then becomes an inſtantaneous act of ſelf defence *at riſk*; ſo far from its being ſolely appropriated to the *ſupreme magiſtrate*, it is not confined to *magiſtracy* at all; any *private* perſon may equally at *his riſk* ſave the ſtate.

But the *neceſſity* for any further remedy or proviſion to prevent a failure of juſtice, to which our conſtitution is utterly abhorrent, according to you, and every publick advocate for the proclamation, aroſe from the ill conduct of the *repreſentative body*. Admit for argument ſake, that the law had no adequate proviſion, and that for the prevention of a failure of juſtice, a further remedy was abſolutely neceſſary; admit too for argument ſake, that the repreſentatives were as blame-

able, as you fancy them, and were the ſole, intentional and wicked occaſion of that *neceſſity*, it is very inconcluſive, that therefore government might eſtabliſh the remedy, which the *legiſlature* ought to have eſtabliſhed, and the *lower houſe* prevented. Our conſtitution provides or allows a remedy, when either branch of the legiſlature acts in direct oppoſition to the ends and purpoſes of their creation; in ſuch unnatural event, the power again flows back into the hands of the people. If the *ſupreme magiſtrate* acts, as king James did, a precedent is ſet, which ought to be imitated. If the *repreſentative body* ſhould act in direct oppoſition to the ends and purpoſes of their creation, the remedy is by a *diſſolution*, which is properly and for that purpoſe intruſted with prerogative; the power flows back again into the hands of the people to be exerciſed in a new choice, but *they* and *only they* are ultimate and concluſive *judges* of the propriety of the conduct of their *repreſentatives*. There is nothing in the caſe, as ſtated by yourſelf, unforeſeen or unprovided for by our conſtitution; and government would be as well juſtified for having hanged a ſubject *by proclamation* after an acquittal by a jury for murder, *againſt the duty of the jury*, as government can be juſtified by making a *neceſſary eſtabliſhment* by *proclamation*, becauſe the *repreſentatives againſt their duty* refuſed to concur in enacting that *neceſſary eſtabliſhment*. But the people, the ultimate and concluſive *judges* of the propriety of the conduct of their *repreſentatives*, have approved their conduct by *two ſeveral re-elections*. What weight, then, have the people in the conſtitution, which ought as the firſt principle of it to be kept on a juſt balance and equipoiſe, if *that* ſhall be enacted by *prerogative*, on the foundation of *neceſſity*, in the enaction of *which* they deliberately refuſe to concur?

If the ſuppoſed neceſſity is to juſtify the proclamation, who is to be judge of the neceſſity? if the ſupreme magiſtrate is to be judge, the power is unlimitted, and then the diſcretion of prerogative may apply it to any inſtance whatever; "and ſo diſcretion degenerates into deſpotiſm."

As to your *legal authorities*, we agree your caſes, except that in Hob. are ſound law, and hold with the principles laid down by Mr. Locke; yet we think you have miſtaken and miſapplied thoſe great authorities. You marvel much that the right of prerogative to prevent extortion ſhould be queſtioned or doubted. No man, Sir, queſtions or doubts the right of prerogative *in a legal way* to prevent extortion; but the queſtion ſtill recurs, is the proclamation in diſpute a legal way or not? it is the right of prerogative to admoniſh the ſubject by *proclamation* againſt the breach of *ſubſiſting laws*; but every man "of common juridical knowledge," denies any right of prerogative to eſtabliſh what is, and what is not extortion, or to give the rule, or fix the ſtandard for the fees of office, beyond which is, and within which is not, extortion. Had there been any *ſubſiſting law* of the province regulating the fees of office, a proclamation forbidding the officers to exact beyond ſuch *legal eſtabliſhment*, and admoniſhing them to an obſervance of ſuch *ſubſiſting law*, would have been a conſtitutional exerciſe of *legal prerogative*; or in the now circumſtances of the province, a proclamation, forbidding the officers to exact *unreaſonable* or *exorbitant* fees for ſervices actually performed by them, or any money or other valuable thing, under colour of office, for ſervices not actually performed, would likewiſe have been a conſtitutional exerciſe of *legal prerogative*; but when no law ſubſiſts for the regulation of fees, when no law allows any other than a juſt compenſation for the ſervice, a *jury alone* can legally and conſtitutionally aſcertain the quantum; and what is, or what is not extortion, conſequently reſts with them.

"My lord Coke (you ſay) obſerves, that proclamations are of great force, which are grounded on the laws of the realm, for although the king by his proclamation or otherwiſe, cannot change any part of the common law, or ſtatute law, or the cuſtoms of the realm, nor create any offence by his prohibition or proclamation, which was not an offence before (that being to alter the law of the land) yet he may prohibit by his proclamation a thing, which is puniſhable by the law, by fine or impriſonment, and that as a circumſtance may aggravate the offence." A proclamation then is of no force, which is not grounded upon ſome law. Pray, Sir, what law is the proclamation in queſtion grounded upon? what law does it ratify or confirm or admoniſh the officers to an obſervance of, in reſtricting them from exacting fees beyond the old table? we know of no ſuch law ſince the expiration of the late act of aſſembly, which eſtabliſhed that table—"Although continues the ſage, "the king by his proclamation or otherwiſe, "cannot change any part of the common law, &c." at common law, the exaction of fees for ſervices never rendered, under colour of office, is extortion. Did you not know, that the ſecretary, under the old table, charged for recording proceedings which were not, nor need be recorded? and that the commiſſary-general charged for letters of adminiſtration which he never granted? theſe charges are infractions of the common law, for as much as they fall within the deſcription of common law extortion, which is "the "taking money, under colour of office, which is not "due, or more than is due, or before it is due," and ſurely the exaction of fees for ſervices never performed comes fully within the definition. If the old regulation warranted the uſual charges of fees as contended for by the upper houſe for ſervices never performed, does not the proclamation "change the common "law" by eſtabliſhing the old table for a ſtandard, and giving a ſanction to exactions which the common law forbids, and puniſhes as extortion? but to engage our attention you give us in capitals, what your great author further obſerves; "the king may prohibit by his "proclamation a thing which is puniſhable by the "law, with fine and impriſonment, and that as a circumſtance may aggravate the offence." To apply this obſervation in defence of the proclamation, you muſt admit ſome *pre-exiſting offence* puniſhable by ſome *pre-exiſting law*, with fine and impriſonment, which the proclamation in aid of the *pre-exiſting law* was iſſued to prevent, by an aggravation of ſuch offence. What offence, Sir, does the proclamation in queſtion, in your idea of it, allude to and affect to prevent? doubtleſs the offence of extortion at common law. But what is extortion at common law? the exaction of fees for ſervices never rendered, &c. Is the proclamation in queſtion calculated to enforce the common law in the prevention of ſuch exaction and extortion? advert to the old table of fees eſtabliſhed by the proclamation and the colourable practices under it, and affirm the fact if you can. The proclamation inſtead of aiding the common law in the prevention of ſuch extortion, by an aggravation of the offence, aims in fact to wipe out the offence, and pluck away the puniſhment by an authoritative allowance of the exaction.

Captivated by the ſpecious pretence of the proclamation "to prevent extortions and oppreſſions," you haſtily formed your judgment upon that circumſtance alone, without reflecting, that what is extortion or not, muſt be aſcertained by ſome *pre-exiſting law*, or left to the deciſion of a jury, and could not be *created, bounded* or *defined* by the proclamation itſelf in the eſtabliſhment of a ſtandard; and yet it is "paſſing "ſtrange," the law caſes cited by yourſelf did not open your eyes and bring you to reflection.

But here you ſay, "you would proceed on the "grounds and authorities of law above adduced, to "conſider the conſtitutional nature and legal effect of "a proclamation, to enforce an antient or prior ſub-"ſiſting law againſt oppreſſion and extortion in the "various departments of office, &c. &c." After, Sir, you had evinced the right of the proprietary, generally, to iſſue proclamations, which are grounded upon ancient or prior ſubſiſting laws, and calculated to enforce them, how comes it to paſs that you forgot to point out to the publick, *what ancient or prior ſubſiſting law* againſt extortion and oppreſſion in the various departments of office, the proclamation in queſtion was grounded upon, or calculated to enforce? to beg the point in queſtion is not admiſſible in argument. Turn over again your law books and our acts of aſſembly, and be pleaſed to furniſh us with *this ancient or prior ſubſiſting law* eſtabliſhing the rates of the late regulation: do this, and every man of "common juridical "knowledge" will admit the legality of the proclamation.

But you go on "if oppreſſion and extortion are "offences puniſhable by the laws of the land, and that "they are, the law books ſpeak aloud, and too fre-"quent experience ſadly evince, then I have no doubt "in declaring my opinion that a proclamation proh-"biting theſe offences, being grounded as the "Lord Coke ſaith on the laws of the land or "as Judge Blackſtone expreſſeth it, being made to "enforce a prior ſubſiſting law among us againſt "theſe offences is conſtitutional, legal, beneficial to "the people, and obligatory to all intents and pur-"poſes upon ſuch as are the objects of it, and conſe-"quently that the governor's proclamation being "iſſued for theſe purpoſes, and grounded on the "actual exiſting laws of the land, is with reſpect to "the officers &c. conſtitutional, legal, and benefi-"cial." If, which is true, oppreſſion and extortion are offences puniſhable by the laws of the land, with what conſiſtency can you aſſert, that on the fall of the late regulation, "through want of reſtriction of ſome "poſitive law, the officers were left at large to riot "with the property and purſes of every man that "might have occaſion to do buſineſs in their offices." Thus are you obliged to make out the *legality* of the proclamation on a *pre-exiſting law againſt oppreſſion and extortion*, and to make out the *expediency* and *neceſſity* of the ſame proclamation, "through want of the reſtriction of *ſome poſitive law*, whereby the officers were *left at large* to riot with the property and purſes of every man, &c." We grant, Sir, that oppreſſion and extortion are offences puniſhable by the law of the land; but we deny that the proclamation is grounded upon the law. The law of the land, which forbids oppreſſion and extortion, is the common law. What is it, that perſuades you to think, that the proclamation is grounded upon the common law, and calculated to ratify, confirm or enforce it? You have nothing to urge but the *bare recital* of the proclamation itſelf, "to prevent oppreſſions and extortions." But the pageantry of the recital is no evidence of the truth of your propoſition. What the proclamation *enacts, authoriſes* and *eſtabliſhes*, muſt rule the determination of the preſent queſtion. If the proclamation *enacts, authoriſes* and *eſtabliſhes*, what the common law *enacts, authoriſes* and *eſtabliſhes*, then indeed, "being grounded, as lord Coke ſaith, on the laws of the land," or as judge Blackſtone expreſſeth it, "being made to enforce a prior ſubſiſting law," it is conſtitutional and legal; but if it *enacts, authoriſes* and *eſtabliſhes*, what the common law does not *enact, authoriſe* and *eſtabliſh*, then Sir, not "being grounded, as lord Coke ſaith, on the laws of the land," or as judge Blackſtone expreſſeth it, not "being made to enforce a prior ſubſiſting law," it is unconſtitutional and illegal. Is the enacting and ſubſtantial part of the proclamation then grounded upon the common law of the land, and calculated to ratify, confirm and enforce it? mark, Sir, the diverſity between them. The proclamation eſtabliſhes the *old table* of fees; the common law of the land knows of no *ſuch table*: the proclamation ſets it up as the *ſtandard* for the fees of office, and aſſumes the authority to *define* and *aſcertain* that only to be extortion, which exceeds ſuch ſtandard; the common law has no other ſtandard than *natural juſtice*, and ſubmits the queſtion, of extortion, or not, to the deciſion of a jury; the proclamation by an eſtabliſhment of the *old table*, gives a ſanction to exactions for ſervices never rendered; the common law prohibits ſuch exactions, and puniſhes them as extortion. Thus, Sir, you find, that the proclamation inſtead of preventing the extortions and oppreſſions which the common law forbids, or treading in the ſteps of the common law, prevents only thoſe extortions and oppreſſions, which his lordſhip's council, compoſed partly of the *officers themſelves*, have been *graciouſly* pleaſed to *admit, define* and *aſcertain* as ſuch: and thus you find, that inſtead of ſtrengthning the common law, by keeping unimpaired and inviolate the conſtitutional power of a jury to aſcertain the quantum for a ſervice done in caſe of conteſt, where no law ſubſiſts for a regulation of fees, the proclamation over-rules the common law, snatches this conſtitutional power from a jury, and *complaiſantly* gives it to the *officers themſelves*; and thus you find the *officers* by this governmental act are made *judges and parties*, in ſubverſion of every principle of law, policy and juſtice. With what truth or propriety, then, can you affirm, that the proclamation in queſtion is grounded upon the common law, and calculated to ratify, confirm and enforce it? If you ſhould, as we imagine you will, think yourſelf *conſtrained* again to appear in print, we ſhall be obliged to you pointedly to anſwer, whether if no proclamation had iſſued, there could not have been a conviction for extortion? if there could not, whether there now can be any ſuch conviction? and if there can, whether the crime will conſiſt in the exceſs above the rates allowed by the proclamation, or beyond the juſt proportion and merit of the ſervice? all our ſages of the law require "an ancient or prior ſubſiſting law" to found a proclamation upon; for tho' the thing prohibited or commanded by the proclamation, is prohibited or commanded by ſuch ancient or prior ſubſiſting law, yet the proclamation is a circumſtance which aggravates the breach of it; becauſe it appriſes the ſubject of ſuch law, and admoniſhes him to an obſervance of it. Grounded upon ſuch a law, a proclamation is legal and conſtitutional; not grounded upon ſuch a law, it is illegal and unconſtitutional. Wherefore, as the proclamation in queſtion was founded upon no *ſubſiſting law* for the eſtabliſhment of the old table of fees, and of conſequence not calculated to ratify, confirm and enforce ſuch *ſubſiſting law*, it was an act of uſurpation and lawleſs.

Permit us to make a ſhort recapitulation of your arguments ſo far as we have already conſidered them.—The proclamation you have argued, was founded upon the law of the land, and calculated to enforce it;—becauſe the law of the land knows of no ſuch table as is eſtabliſhed by it, and prohibits exactions for ſervices never rendered, which the proclamation authoriſes and gives a ſanction to.—The proclamation you have argued, was iſſued to prevent extortion and oppreſſion;—becauſe it eſtabliſhes the old table of fees rejected by two different aſſemblies, as fraught with oppreſſion, allows the officer to charge according to that table and countenances the practices under it.—The proclamation you have argued was manifeſtly calculated to promote the intereſts of the people;—becauſe it gave the alternative to pay in tobacco or money, when the proclamation allows the people the alternative only in caſe of *immediate payment*, and without the proclamation the people were entitled to pay in money, and under no obligation to pay in tobacco.—The proclamation, you have argued, was beneficial in preventing conteſt about fees;—becauſe the payment of the fees eſtabliſhed by it, you aſſert, was optional in the people and the officer obliged, in caſe of conteſt to ſeek his remedy in a court of law.—The proclamation you have argued was the *only* conſtitutional mode of checking oppreſſion and extortion by officers;—becauſe, you allow, oppreſſion and extortion are puniſhable by the laws of the land.

Having remarked thus far on your authorities, We proceed now to take notice of your arguments deduced from the charter, Mr. Locke and the caſe in Hobart.

You have diſplayed great abilities, to be ſure, in your deduction of the prerogatives of the crown to the lord proprietary through the channel of his lordſhip's charter. That the lord proprietary with reſpect to the powers of government ſtands here in loco regis, we ſhall not controvert; but we deny the crown poſſeſſes the prerogative, which your complaiſance would give to his lordſhip; and what the crown had not, the crown could not grant.

"Fees, you ſay, being incidental to, or as ſome "chooſe to call them, the perquiſites of, office, are "conſtitutionally and properly rateable only by the "ſame, or like authority, that eſtabliſhed the office "and appointed the officer." The appointment of officers is conſtitutionally in the king and by his grant transferred to the proprietor. The eſtabliſhment of offices is a matter of a good deal of conſequence to the ſubject; thoſe which are old and known to the conſtitution cannot be altered, let their original eſtabliſhment or modification have been by what authority ſoever; but we apprehend no authority leſs than the legiſlative can eſtabliſh a new office in ſuch manner as to create any charge, burthen, or trouble to the ſubject. Yet if fees are conſtitutionally and properly rateable only by his lordſhip, or his governor, then by his proclamation he may conſtitutionally enforce the payment of them; becauſe it is an abſurdity in terms, that his lordſhip ſhould poſſeſs a conſtitutional power, which he cannot conſtitutionally exerciſe to affect and bind the people. If this, Sir, is your idea of prerogative, how uncandid was the attempt to lull our fears by confident aſſertions, that the people "are not, nor could be affected by the proclamation" in the eſtabliſhment of fees! And when you are pleaſed to affirm this conſtitutional power in his lordſhip to rate the fees of office, and we add, as a conſequence, to enforce a payment, for a conſtitutional power to rate implies a conſtitutional power to enforce, the fees rated being a dead letter unleſs obligatory upon the people, was it not extremely unkind in you, when ſo much depended upon the point, to withhold your authorities from us and to give us only your *naked aſſertion*?

No fees originally were demandable of the ſubject. The king paid the officers out of his own revenues. While the charges and expences of the adminiſtration of juſtice were defrayed by the king out of his own

pocket, no doubt he had naturally a right to fix and aſcertain the fees of his officers; for ſurely the king might *give* and *grant* his own property to *whom*, and in what *proportion* he pleaſed. But when this mode of defraying the charges and expences of office, reſulting from the publick adminiſtration of juſtice, had declined, and fees were exacted of the ſubject in lieu of it, this right in the king to rate and eſtabliſh the fees of office ceaſed and determined; becauſe the king cannot *give* and *grant* the property of his ſubjects to *whom* and in what *proportion* he pleaſes.

You obſerve, that it hath been objected againſt the proclamation, that it doth eſtabliſh a tax upon the people; this you deny, and contend, that fees and taxes are two very different things——In ſupport of the objection againſt the proclamation, lord Coke's obſervations on the ſtatute de tallagio non concedendo were adduced; although it was incumbent on thoſe who maintain the affirmative, to prove their propoſition, yet after authority had been brought as proof, it was equally incumbent on you to ſhew ſome defect in that authority; you have taken a ſhort way, by denying the propoſition without taking any notice of the authority adduced in ſupport of it. But fees, you ſay, are not taxes, becauſe "the right to demand them may evidently exiſt prior to the rate or regulation of the quantum;" ſo has every publick creditor, before the rate to raiſe a tax, wherewith to pay him, is ſet, a right to be ſatisfied for his ſervices performed for the publick, and in very many inſtances before the quantum due to him is aſcertained—It is not the *right* of either the officer or publick creditor, which creates the tax, but the *rating* on the ſubject—But fees you ſay "may originate and ſubſiſt excluſive of any legiſlative authority to impoſe, or grant them, which is eſſential to taxation." Do you mean, Sir, that ALL fees may originate? &c. if you do, be pleaſed to adduce your proof. If you mean that *ſome* fees may originate, &c. be pleaſed to point *them* out, and the authority by which they may originate and ſubſiſt; your poſition may perhaps then ſtand harmleſs enough—Fees, you ſay, are "conſtitutionally and properly rateable only by the ſame or like authority that eſtabliſhed the office and appointed the officer." The aſſertion is poſitive enough, but wants proof. But taxes, you ſay, are "certain portions of property which individuals pay *into the hands of the publick* for the *publick's ſervices*." Into whoſe hands certain portions of property are paid makes no conſtituent difference; the tonnage is not the leſs a tax, or a leſs grievous one, becauſe paid into the hands of the proprietor for *his own private uſe*; nor would it be, if paid into the hands of any officer, or A. B. a mere private perſon for his own private uſe, either for publick ſervices or for nothing at all—Fees you ſay, are "certain *rewards*, which the officer is entitled to of *ſome individuals*, to his own or anothers private uſe"—You might have ſaid *of every individual* for whom ſervices are done in the execution of office. The uſe money may be applied to after receipt from the ſubject makes no difference, in one ſenſe the money paid to an officer *as fees* may be ſaid to be paid for a publick uſe——the ſupport of publick offices neceſſary for the adminiſtration of juſtice; and in this light very genteel ſalaries are contended for. The money collected from the ſubject by any kind of tax, and diſtributed to the ſoldier or other ſervant of the publick, when it comes to his hands, is as much his property as the fees of office, when received, is that of the officer, who receives it; and in this ſenſe may be equally ſaid to be for his *private uſe*. It makes no difference to the ſubject, nor makes it be, or ceaſe to be, a tax, whether the money goes immediately to the officer or paſſes through intermediate hands to reach him; whether the officer is intitled to the whole without diviſion, or to a part only on diſtribution——ſuppoſe the propoſal once made by the upper houſe had taken effect, and the ſecretary, commiſſary, and judges of the land office had each been allowed a certain yearly ſalary to be paid by the publick, and the fees of thoſe offices had been collected by the officers of the publick, and made one ſtock or fund, out of which to pay and diſtribute thoſe ſalaries, would the fees then have been taxes or not? they would have been *certain portions of property which individuals would have paid into the hands of the publick for the publick's ſervices* and would have fallen preciſely within *your* definition of a tax——indeed the portion or quantity of property, any individual muſt have paid, would have depended on what ſervices were performed for him, in like manner as the portion or quantity of property, an individual muſt pay under a tax on candles or the like, depends on the quantity of ſuch articles, which he conſumes——you go on further to diſtinguiſh "fees "when *certain* are ſuable for and recoverable by pro- "ceſs of indebitatus aſſumpſit, when *uncertain* by "quantum meruit; but neither of theſe proceſſes will "lie for the recovery of taxes, the payment of theſe "is generally compelled by diſtreſs or execution pro- "vided by the law which gives the tax." What avails, Sir, the diverſity of proceſs? Becauſe the payment of taxes is *generally* compelled by diſtreſs or execution provided by the law, which gives the tax, is it therefore neceſſary, that ſuch or any other mode ſhould be provided by the law, which gives the tax, to compel payment thereof, in order to make it *properly* a tax? If no mode whatever was provided by the law, which gave a tax, to compel payment thereof, would not the common law ſupply a mode to compel a payment of it? Moſt certainly it would; yet if becauſe the payment of taxes is *generally* compelled by diſtreſs or execution provided by the law, which gives the tax, it is therefore a neceſſary conſtituent part to create ſuch tax, that the payment thereof ſhould be compelled by diſtreſs or execution, it would ſeem as fairly to follow that, becauſe the payment of fees hath been *generally* compelled by diſtreſs or execution provided by the laws, which rated and eſtabliſhed them; it is equally a neceſſary and conſtituent part to rate and eſtabliſh fees, that the payment ſhould be compelled by diſtreſs or execution, provided by the law which gives them; the power of compelling which payment by diſtreſs or execution, we preſume, you will not deny, reſts in the legiſlature only. If the diſtreſs or execution to enforce payment is an infallible mark of taxes, then diſtreſs or execution or both being generally given by the acts, which regulated fees, to enforce payment of them, they are from thence proved properly taxes. That a quantum meruit lies for an officer,, on which he may recover a juſt ſatisfaction to be aſcertained by a jury for his ſervices, hath always been admitted, but concludes nothing for you to the point in queſtion—*the right to a compenſation* was never contended to be a TAX, but *the rating and eſtabliſhing fees* by legal authority cloſes the mouth of the party as to the quantum, precludes all conteſt about it, and a fee thus rated is effectually and eſſentially a tax—you maintain that fees are not taxes, we maintain that the very fees rated and eſtabliſhed by the proclamation are taxes; you have adduced your reaſons why fees are not taxes, we have run into ſome prolixity to ſhew they are; we are not diſputing about *words* but *things*. Fees are *tallages*, *taxes*, *burthens*, or *charges*—If they are either of theſe, it muſt ſtand agreed on all hands, that the rating and eſtabliſhment of them belongs properly to the legiſlature only, and iſſuing the proclamation was an illegal aſſumption of power—Let us then ſee, whoſe reaſoning is beſt ſupported by legal authority; the ſtatute de tallagio non concedendo, ſpeaking as antient ſtatutes frequently do in the perſon of the king, ſays "*nullum tallagium* vel *auxilium*, &c."

On which my lord Coke obſerves, "theſe words are plain without any ſcruple, abſolute without any ſaving. And this is as much as to ſay, that no ſubſidy, taſk, tenth, fifteenth, impoſition or other aid or charge whatſoever, ſhall by the king or his heirs, be put or levied without the common council of the realm; that is to ſay, by grant and common aſſent in parliament. Within this act are all new offices erected with new fees, *or old offices with new fees*, for that is a tallage put upon the ſubject, which cannot be done without common aſſent by act of parliament, &c. ſo all tallages, burthens or charges put upon the ſubject by the king, either to or for *the king*, or to or for *any ſubject* by the king's letters patents, or other commandment or order, are prohibited by this act; unleſs it be by common conſent of parliament. And note that the words are in the diſjunctive, (ponatur ſeu levetur) ſo as if it be *ſet* by the king, altho' it be not levied *by him*, but by a *ſubject*, as it was in the caſes aboveſaid, it is within the purview of this ſtatute." Pray Sir, does lord Coke ſet up the unſubſtantial diſtinctions, which you do? does he *not* expreſsly ſay, that all impoſitions and charges whatſoever are within the ſtatute; that all tallages, burthens or charges put upon the ſubject by the king, either to or for the king, *or to* or *for any ſubject*, by the king's letters patent, or other commandment or order, are prohibited by that act, unleſs it be by common conſent of parliament? and more, that if it be *ſet* by the king, although it be not *levied* by *him*, but by a *ſubject*' it is within the purview of the ſtatute—nay does he not conclude to the very point in theſe words, "within this ſtatute are all new offices erected with new fees, or *old offices with* NEW *fees*, for that is a tallage put upon the ſubject, which cannot be done without common aſſent by act of parliament——If my lord Coke's authority is admitted, and the fees rated and eſtabliſhed by the proclamation, are within his idea, *new* fees, there muſt be an end of the queſtion. Were they or were they not then within his idea, *new* fees? you have ſaid nothing on the ſubject, and therefore you are at liberty to admit or deny. They have, very improperly indeed, been contended by others to be *old* fees, notwithſtanding at the time of the proclamation their temporary eſtabliſhment had ceaſed by effluction of time, and they had then no legal exiſtence at all. *Old fees*, which are legal, as in oppoſition to *new fees*, which are illegal, are ſuch we apprehend as have had an immemorial uninterrupted continuance, are founded on *cuſtom* for their ſupport, or have *cuſtom* to evidence their *legal origin*——If the expired temporary regulation diſtinguiſhes them from *new fees*, which cannot be impoſed but by legiſlative authority, and claſſes them amnogſt *old fees*, which are legal on the ground of cuſtom, without being otherwiſe evidenced to be ſo by any legiſlative act, how long muſt ſuch temporary regulation have had continuance to work ſuch effect? we know the origin of theſe fees, and know their diſcontinuance and expiration; the doctrine is new, that on the expiration of a temporary charge or burthen on the ſubject, that the expired act, which gave it birth, and alone preſerved its exiſtence, ſhould tho' a dead letter be a ſufficient ſtock, on which to graft a continuance of that charge or burthen, not only *without*, but *againſt* the *declared will* of a component branch of the legiſlature.

Your obſervations upon the difference between fees and taxes, you truſt, will ſhew "in whom the conſtitutional right and power of regulating the fees of office doth reſide, and by whom it is to be exerciſed on fit and proper occaſions." The perſon, you refer to, is the lord proprietary or his governor, who repreſents him. And "fees, you have ſaid, *when certain*, (we preſume you mean when conſtitutionally rated and regulated) are ſuable for, and recoverable by, proceſs of indebitatus aſſumpſit." We may therefore fairly infer from the two poſitions, that the officers of our province are entitled to an action of indebitatus aſſumpſit, for the recovery of the fees thus conſtitutionally rated and regulated by proclamation. Upon an action brought for ſuch fees, what evidence would you offer in ſupport of the claim? would you offer the proclamation to the jury? indeed, Sir, you muſt do it, or at all events the officer muſt fail in his action; for an indebitatus aſſumpſit will not lie, as you yourſelf have ſaid, for fees, unleſs rated, regulated and reduced to a certainty; and in this province the fees are rated, regulated and reduced to a certainty by the proclamation *only*, which you contend to be a legal and conſtitutional rate and regulation. And yet, Sir, you cannot offer the proclamation in evidence; for in your own expreſſive terms, the people "neither are nor can be affected by it;" and to give it in evidence to maintain the actions of an officer or eſtabliſh his claim, would certainly affect them. To ſupport one of your poſitions, you ſee, the proclamation *may* and *muſt* be given in evidence; to ſupport another of your poſitions, the proclamation *muſt not, cannot* be given in evidence. Was ever man ſo bewildered! prerogative, Sir, will hardly be benefited by ſuch an advocate.

You have been very full in your explanation of the paragraph quoted by you from the charter; and we moſt ſincerely coincide with you in the aſſertion, that prerogative by its ordinances "cannot oblige, bind, "charge, or take away, the right or intereſt of any "perſon or perſons, of or in member, life, freehold, "goods or chattels." We further agree with you, that this reſtriction at the cloſe of the paragraph, "would have been implied by law, had it not been "inſerted;" inſerted, we preſume, to prevent miſconſtruction from an ignorance of the law and conſtitution. You ſeem to forget that you have maintained, that the authority to rate and regulate the fees of office, is conſtitutionally in the proprietary or his governor, by proclamation. Are not the fees of office, which come out of the pockets of the people, a part of their goods and chattels? and if the authority to rate and regulate them is conſtitutionally in the proprietary or his governor, do you not in ſubverſion of the charter inveſt his lordſhip with a prerogative to "oblige, bind, charge and take away the right and "intereſt of the ſubject in his goods and chattels." But you ſay, the payment of the fees conſtitutionally rated and regulated by the proclamation, is optional only in the people. To contend, that a conſtitutional power exiſts to rate and regulate the fees of office by proclamation, and in the next breath to contend, that the exerciſe of ſuch conſtitutional power in the rating and regulating of the fees cannot bind or affect the people, is a flat contradiction, and an abſurdity in terms. Obedience is due to the exerciſe of every conſtitutional power, and "Obedience is an empty name, if every "individual has a right to decide how far he himſelf "ſhall obey." Whatever is legal prerogative, is the law of the land, and every law carries with it an obligation upon the ſubject. "In the exertion of thoſe "prerogatives, ſaith judge Blackſtone, which the law "gives him, the the king is *irreſiſtible* and *abſolute*, ac- "cording to theforms of the conſtitution." The prerogatives of the crown through the medium of our charter you communicate to the lord proprietary. If then his lordſhip or his governor by virtue of a legal prerogative, can conſtitutionally rate and regulate the fees of office, he is in the exertion of ſuch prerogative *irreſiſtible* and *abſolute*, and the people muſt be affected, bound and concluded by it. When therefore you affirm the proclamation in queſtion to be a conſtitutional exertion of legal prerogative, your aſſertion that the payment of fees rated and eſtabliſheſt by it, is optional in the people, becomes repugnant and abſurd. Wherefore as the proclamation is maintained to be an exerciſe of legal prerogative, and every exertion of legal prerogative is compulſory upon the people; as it rates and regulates the fees of office, and the fees of office are the goods and chattels of the ſubject, it follows as an indubitable conſequence, that the proclamation in queſtion tends to "oblige, bind and charge the right "and intereſt of the ſubject in his goods and chattels," and is a palpable infraction of the charter, and a maſeſt invaſion of the property of the people.

We now come to your obſervations upon Mr. Locke; we feel no reluctance to ſubmit to the rule, he ſuggeſts, as deciſive betwixt us; let it then ſtand as the teſt or criterion of legal prerogative. We ſhall endeavour to ſhew, that you have miſtaken the ſenſe of your author, which underſtood, applies directly againſt you.

Whether the proclamation was, or was not, beneficial to the people, has been already conſidered; there is no neceſſity to repeat what has been before obſerved, Every objection to the old table of fees applies to the proclamation which attempts to ſet it up. The oppreſſions of that table, and the colourable practices under it, have been pointed out, and if advanced with truth, muſt be deciſive againſt the proclamation, upon the queſtion of tendency to the good or hurt of the people.

To come fairly at you upon your conſtruction of Mr. Locke, we wave the arguments evincing the evil tendency of the proclamation, and ſhall for argument ſake admit, that the tendency of the meaſure was to the publick good. The queſtion then between us is this Whether in Mr. Locke's idea the tendency of the proclamation to the good or hurt of the people is to be adopted as the criterion to decide the legality of it, *as an exerciſe of legal prerogative?*

Before, Sir, we remark upon Mr. Locke, permit us to point out a plain and obvious diſtinction, neceſſary to be kept in memory, between the tendency of a *particular meaſure* and the general tendency of the *power aſſumed*. *A particular meaſure* may tend to the publick good, the *power aſſumed* may tend to the publick hurt. To prove it by examples. *A regulation of our ſtate* would greatly tend to the good of the people, but if a *power was aſſumed* to make the regulation by a proclamation, the general tendency of *ſuch a power* would be manifeſtly to the hurt and injury of the people; becauſe it would tear up the conſtitution by the roots, and deſtroy *repreſentatives*. A *regulation* too of the clergy, upon moderate and equitable principles would tend to the publick good; but ſurely the exerciſe of ſuch a power by the ſupreme magiſtrate only, by virtue of prerogative, would for the reaſon ſuggeſted, be productive of the moſt dangerous and alarming conſequences. Again,—It might tend to the publick good to ouſt the authors of particular offences from the benefit of clergy, which has often been done by acts of aſſembly, but ſurely ſuch power will never be intruſted to the ſupreme magiſtrate only, to be exerciſed by virtue of prerogative. A *particular meaſure* therefore, may be beneficial, the *power aſſumed* deſtructive.

Mr. Locke was a bold intrepid advocate for the

rights and liberties of his country. He thoroughly understood the constitution, and generously employed his pen in tracing and pointing out the fundamental principles of it. He is often quoted upon constitutional questions, and his opinion, well understood, is generally decisive—He very well knew that a publick good might result from *a particular measure* of government, but his veneration for the constitution was too great, his judgment too sound and pervading to draw the fatal inference that therefore the *power assumed* must be legal prerogative.

You have nevertheless argued from the tendency of the proclamation to the good of the people that the *power assumed* to make it was an exercise of *legal prerogative*. You ground yourself upon a quotation from Mr. Locke; if the quotation applies, your argument is conclusive; if it does not apply, your argument falls to the ground. What then is Mr. Locke's position?—"If there comes to be a question, says that great author, between the executive power and the people "*about a thing claimed as prerogative*, THE TENDENCY "OF THE EXERCISE OF SUCH A PREROGATIVE to "the good or hurt of the people will easily decide "that question." Mr. Locke, Sir, does not speak of the tendency of a *particular measure* as a rule to decide the legality of it, but speaks of the general tendency of *the power claimed as prerogative*, as a rule by which the question may be decided, whether that *power* be a *legal prerogative* or only an *usurpation*. You are for deciding the question, whether the *power assumed* by his lordship's governor and council, is a *legal prerogative* by the tendency of the *particular measure* of the proclamation; Mr. Locke is for deciding the question by the general tendency of the *power exercised*. Mr. Locke's rule of decision is sound, solid, and infallible; your's is precarious, treacherous, and deceiving. If the tendency of a *particular measure* was sufficient to make the *authority*, which created it, a *legal prerogative*, What is it that the legislature can do, which might not be done by prerogative? Every *power exercised*, according to your construction, is *legal prerogative*, when the particular act done tends to the publick good, and of consequence prerogative may legally do every act, which is calculated for the publick good—A legislature can do no more. Your construction, you see, makes *representatives* useless. But Mr. Locke's rule of decision will stand the test of the severest scrutiny. For if the general tendency of the *power exercised* is for the good of the people, no infraction of the constitution, no injury to the constitutional rights of the people can result from it, and therefore such a POWER may be safely intrusted, as *legal prerogative*, in the hands of the supreme magistrate to be discretionally exercised for the publick utility.

To convince you that our construction of Mr. Locke is not merely the effect of fancy and imagination, permit us to trouble you with an extract or two from the speech of an eminent sage of the law; in answer to an argument drawn from the *same words* of Mr. Locke to shew, that the tendency of the embargo lately laid in England to the good and not to the hurt of the people must decide for the legality of *that measure* as an exercise of *legal prerogative*.

"Mr. Locke (says the great lawyer) is not here "speaking of the tendency of a *single act* done in "exercise of a right of prerogative, as a rule to de"cide the legality of that *particular act*; he speaks, "and his *words are plain*, of the tendency, that is the "general tendency, of the *exercise of a power or thing "claimed as a prerogative*, as a rule by which the "question may be decided, whether that *power or "thing claimed as a prerogative* be really a *legal prero"gative* or an *usurpation*, and most undoubtedly it is "an infallible rule of decision."

"I admit, that a power which is not a legal prero"gative, may be exercised for the good of the peo"ple: and so I will allow too, that the most legal "prerogative that exists may be exercised to the hurt "of the people. But as the hurtful exercise of a "legal prerogative, in a particular instance, will not "make the prerogative, so hurtfully exercised, cease "to be a legal prerogative, or prove that the general "tendency of such a prerogative is to the hurt of the "people, and therefore that it ought not to be a "prerogative; so neither will a beneficial exercise in "a particular instance of an illegal or usurped prero"gative, change its nature and general tendency, so "as to decide that it is or ought to be a legal prero"gative. I will explain myself, though I hardly "think it necessary, by examples. It is the undoubt"ed prerogative of the crown, to declare war, make "peace and treaties, to create peers, and to pardon "offenders. And the general tendency of the exer"cise of all those prerogatives is for the good, and not "for the hurt of the people: and therefore the con"stitution has vested these powers in the crown, and "they are legal prerogatives. But who will deny that "any one of these prerogatives may be improperly "and hurtfully exercised? If they are, the advisers "of the crown are responsible, though the power ex"ercised is legal, and the acts valid. When the king "makes war, it is war to all its consequences, however "improperly the crown may have been advised in "taking the measure; and so of the rest."

"After all—What is this *old* and *stale* argument "now revived, as to the tendency of the exercise of a "prerogative for the good, and not for the hurt of the "people? What is it, I say, taking things on a "general view, but the exploded argument of ne"cessity repeated in other words? The wildest bigot "to prerogative, or absolute power never pretended, "that any prerogative whatever, the dispensing power "itself, could or ought to be exercised, but for the "good of the people; the prince indeed always being "judge of that."

"I will venture to say, that there is not any one "notion *more exploded and more condemned by our statute "books*, than that notion of the tendency of acts for "the publick good being sufficient to make them "legal; and indeed it is one of the wildest notions "that ever entered the mind of man; for it goes to "cut up all government by the roots, and make every "man a judge and lawgiver for himself. I might "have said, that it is condemned and exploded by all "morality and sound divinity; avowed and professed "only by jesuits and such diabolical casuists."

From the *express words* of Mr. Locke and from the above observations it is plain, that the general tendency of the *power exercised* to the good or hurt of the people, and not the tendency of the *particular act*, is the rule, which he lays down as the test or criterion, by which we are to decide, whether the *power exercised* is legal prerogative or usurpation. To apply the rule to the case in question. Is the general tendency of the *power exercised* by the governor and council, in rating and establishing the fees of office, to the good or hurt of the people? We conceive manifestly to the hurt of the people. If such a *power* is admitted as *legal prerogative*, then may the supreme magistrate, at his will and discretion, *give* and *grant* the property of the people in what *quantum* or *proportions* he pleases, to the *civil officers* of government for their services; and from analogy and parity of principle and reason, he may *give* and *grant* the property of the people, in in what *quantum* or *proportion* he pleases, to the *soldier* or *military officers* for their services. Can any solid difference subsist between a right to dispose of the peoples property to pay the *civil officer* and a right to dispose of it to pay the *military*? And would not the exercise of such a *power*, by the supreme magistrate as *legal prerogative*, sap the foundations of the constitution, and render *representatives* useless, upon the *momentous point of taxation*? Is such tendency of a *power exercised* to the good or hurt of the people. If to the hurt of the people, then, according to Mr. Locke, the power exercised by the governor and council was not *legal prerogative*, but *usurpation*.

You have also quoted Mr. Locke's definition of prerogative though you have not relied upon it in your argument, he defines prerogative to be "a power to act "according to discretion for the publick good with"out the prescription of law *and sometimes even against "it*." Mr. Locke explains himself by examples; to prevent a wrong construction of these expressions "*sometimes even against it*" we beg leave to trouble you with the following extract.

"When Mr. Locke speaks of the prerogative as "*sometimes acting even against law*, or of the laws "themselves yielding to the executive, it is far from "his meaning that the *prerogative* or *executive* can *dis"pense* with or *suspend* laws—*his example* makes it "clear, viz. that of pardoning offenders where the "law condemns, which is certainly undoubted pre"rogative. There the law yields but not in its *force* "or *subsistence*, but in its consequences in a particular "instance; but though the king can pardon, he can"not before hand, even in a particular instance, *dispense* "with the law. The expression of *acting against law* "is perhaps not well chosen, but it is evident Mr. "Locke intended no more than this, that the crown "can by pardon for instance prevent that execution, "which the law would effect. As for the other in"stance mentioned by Mr. Locke of the law yielding "viz. pulling down a house to stop a fire, it is a clear "inaccuracy; for that has nothing in the world to "do with prerogative or magistracy, even no more "than throwing goods overboard to keep a ship from "sinking. It is an instantaneous act of self defence "to authorise what no man waits nor needs seek the "order of a magistrate."

We would here dismiss your argument drawn from the tendency of the proclamation, were we not apprehensive, that you expect we should take some notice of another authority, which you have quoted upon this point. Lord Hobart, you say, very rightly remarks upon proclamations "that they are so far just as they are made pro bono publico, i. e. for the publick good." We have turned to the authority, fol. 255, and though we find the expressions, we do not find, that they are the expressions of his lordship. They are, Sir, the expressions of *arbitrary judges*, in *an arbitrary star chamber court*, upon *an arbitrary proclamation*, by the *arbitrary king James*. That king had issued a proclamation prohibiting the building without brick; the attorney general Yelverton informed in the star chamber, *ore tenus*, for breach of the proclamation. The culprits were severally fined to x years value of the houses built. Mark, Sir, upon what principles this *arbitrary proclamation* was maintained to be legal. It was held "that proclamations were so far "just as they were made pro bono publico, for publick "utility, as against the increase of buildings in London "and about it, whereby if they cannot be fed, cleans"ed or governed, the country is dispeopled and tim"ber consumed, the city less strong and beautiful, and "more subject to fire." This *star chamber authority* is directly with you; for the *power assumed* is deemed to be a *legal prerogative* from the tendency of the *particular act* for the *publick good*; you are welcome to it—valeat quantum valere potest. What do you think the citizens of Annapolis, for example, would say to such a proclamation prohibiting the building in the city without brick? Less timber to be sure would be consumed, the city more beautiful, and less subject to fire, and therefore the proclamation would tend to the publick good; but would they be silenced by the arguments drawn from the tendency of the particular measure? Would they not be apt to say, that notwithstanding such tendency, the *power assumed* is illegal, destructive of natural right and constitutional liberty, and ought to be resisted and opposed? Your *star chamber authority* is founded upon another principle—PRECEDENT. The case goes on "and in this, "the king builds upon old foundations; for he found "the *like proclamations* in queen Elizabeth's time." Yes, one arbitrary measure is generally adduced as a precedent for another; the proclamation in 1733 has been quoted to justify the present; and the present unretracted will in all probability be quoted upon posterity, and another, of the like nature, crammed, down their throats as *an exercise of legal prerogative*—Such, Sir, is your case from Hob. such your *star chamber authority*; Do you not feel a blush upon your cheek?

You are offended with the following objection in the address; "if prerogative may regulate "the fees agreeable to the late inspection law, it has "a right to fix any other quantum; if it has a right "to regulate to one penny, it has a right to regulate "to a million; for where does its right stop? at any "given point? to attempt to limit its right, after "granting it to exist at all, is as contrary to reason, as "granting it to exist at all is contrary to justice." (*A*) But you answer "yes; and let the sound sense of "Horace expressed in the following lines confirm my "assertion:

"Est modus in rebus; sunt certi denique fines
"Quos ultra, citraque, nequit consistere rectum."

And what is the purport of these lines in English? why a medium ought to be observed in all things. When a right is admitted in a man, who, but himself, is to ascertain the medium, which he is to keep in the exercise of it? If a right is exerted beyond a medium, will the excess destroy the right, or will the act done become illegal? by the law of the land every man has a right to make what disposition of his property he pleases; a parent is under a natural and moral obligation to provide for his children; were he in the exercise of the right, which the law gives him over his own property, to pass by his children, and by deed grant it to a stranger, would he not exceed the medium; which Horace speaks of? but surely, Sir, such a disposition would nevertheless be legal. It is the undoubted right of prerogative to declare war and make peace. A peace upon dishonourable and inglorious terms, would not be consistent with Horace's idea of a medium in the exercise of a right; but would such an exertion of the right of prerogative make the peace invalid? Horace lays down a *moral*, and not a *legal* rule; upon questions of *morality* his rule is decisive, upon *legal* questions it is not applicable.

After all, what is this medium? Is it defined, ascertained and pointed out by the law of the land, as a legal rule for the *limitation* of the right of prerogative? has this *sound sense* of Horace been adopted by our common law or statute books? and who is to *judge*, that the limitation is *exceeded*, and declare and notify the *nullity* of the act?

You have given us many entertaining examples to prove the abuse of prerogative to be no argument against the right of prerogative We do not differ upon this point. If prerogative has the right to regulate fees, a regulation to a million we grant would be an abuse of the right; but would such a regulation be invalid, and not compulsory upon the subject? A parent in the disposition of his property may abuse the right which he has over it; the crown in making a peace may abuse the right of prerogative by a conclusion of it upon dishonourable terms; but such disposition by the parent, and peace by the crown, are nevertheless valid and obligatory acts.

"In matters within the *legal prerogative* the crown "is entrusted with the power and has the right to act, "and must be judge of the *necessity* and *season* of acting, "subject always to the control of that constitutional "advice, by which the crown must act in all cases; "but these acts are *legal*, not because they are *neces"sary*, and *proper*, but because they flow from the "*proper authority*, and they are *legal* and *valid*, tho' "*wrong* in themselves, till *corrected*, as a legal power "may be improperly exercised, for which the *advisers* "are *responsible*."——

You have endeavoured to refute some of the objections in the address to the proclamation, and though your force seems to have been levelled principally against that piece, you have passed over other objections contained in it, without taking the least notice of them. We do not know, nor shall we hazard a conjecture, what reasons you have for such silence; but take the liberty to mention one of the objections. "Applications to the publick offices are not of *choice* "but *necessity*; redress cannot be had for the smallest "or most atrocious injuries, but in the courts of "justice; and as surely as that necessity does exist, "and a *binding force* in the proclamation, or the regu"lation of fees in the land-office, be admitted, so "certainly must the fees thereby established be paid in "order to obtain redress." That the subject in this province, by the laws and constitution of it, has a right to obtain redress in the established courts of justice, for injuries done to him, cannot, we presume, be denied; and that, that right cannot be *taken away*, *lessened*, *broke in upon*, or *impaired*, by new modifications, terms, or conditions imposed by any other than *legislative authority*, is equally plain—This doctrine is strongly supported by authorities in law.——Judge Blackstone writeth—"a third subordinate right of every englishman, is that of applying to the courts of justice for redress of injuries. Since the law is in England the supreme arbiter of every man's life, liberty and property, courts of justice *must at all times* be open to the subject, and the law be administred therein. The emphatical words of magna charta, spoken in the person of the king, who in judgment of law (says Sir Edward Coke) is ever present and repeating them in all his courts, are these, *nulli vendemus, nulli negabimus, aut deferemus rectum vel justitiam*; and therefore every subject, continues the same learned author, for injury done to him in *bonis*, in *terris* vel *persona*, by any other subject, be he *ecclesiastical* or *temporal*, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely *without sale*, fully *without any denial*, and speedily *without delay*. It were endless to enumerate all the affirmative acts of parliament, wherein justice is directed to be done according to the law of the land: and what that law is every subject knows, or may know, if he pleases: for it depends not upon the *arbitrary will* of any judge, but *is permanent, fixed and unchangeable, unless by authority*

(*A*) *Vide Farmer's letters.*

of parliament. I ſhall however juſt mention a few negative ſtatutes whereby *abuſes*, *perverſions* or *delays* of juſtice, eſpecially by the PREROGATIVE, are reſtrained. It is is ordained, &c." *(B)*

Sir Edward Coke, in his comment on this chapter of magna charta, ſays, "this is a beneficial law, and is conſtrued benignly;" *(C)* he gives a very ſtrong inſtance,—*(D)* further in his comment on the words *juſtitiam* vel *rectum*, he ſaith, "we ſhall not ſell, deny or delay juſtice and right, *juſtitiam* vel *rectum*, neither the *end*, which is juſtice, *nor the means whereby we may attain to the end*, for that is the law."— *(E)*

Is it not "paſſing ſtrange," that one branch of magna charta, ſecuring the *property* of the ſubject againſt any other, than *parliamentary*, power, ſhould be ſo liberally expounded and of ſuch high authority and force, that it cannot be touched for the defence of the ſociety againſt *foreign* or *internal* force, or under any pretence whatſoever by any craſty device, but the ſubject is left and ſecured in the full, abſolute, unreſtricted and unconditional diſpoſition thereof; and yet, that another branch of magna charta, for ſecuring the right and inheritance of the ſubject in the courts of juſtice, ſhould be ſo little regarded, that a leſs than *legiſlative authority* may eſtabliſh *terms* and *conditions* on the exerciſe of that right, without any *limitation* on the authority, other than the *ſound ſenſe* of *Horace*, "eſt modus in rebus, &c." to reſtrict an exerciſe of ſuch authority, to an occluſion of the courts of juſtice.

We have taken the liberty of mentioning to you the regulation of fees in the land-office; the lower houſe of aſſembly, as has been ſhewn, conſidered the two ſeveral inſtruments, that is the *regulation* for the land-office, and the *proclamation*, as one governmental act; the one containing an *expreſs*, the other an *implied affirmative* rate and allowance of fees—Indeed the land-office was once contended to be the proprietor's *private* office—The lower houſe contended it was a *publick* office, and their reaſoning was ſo far convincing, that it was acknowledged, "ſo far as it was the repoſitory "of the muniments of his (the proprietary's) tenants "eſtates it is a *publick* office, and all the people of "Maryland are entitled to have acceſs to it, as well "as to the other offices." Fees are rated for *ſearches* and *copies* of thoſe records; what juſtification hath then been ſet up for the rating fees for ſuch *ſearches* and *copies?* The officers in the land-office department "being however under a different predicament from "the other officers, conſidered in *one reſpect* as the "private agents of his lordſhip, and in the other as "having the cuſtody of publick records and the mu-"niments of the peoples eſtates, in my (the gover-"nor's) regulation they have been ſeparated from the "other officers, *as they had on ſimilar occaſions.*" We do not clearly comprehend, whether the exerciſe of ſuch power *on ſimilar occaſions* is the point, on which the act is defended, or whether becauſe the officers in the department of the land-office, it is thought, being under a different predicament, *in one reſpect*, from the other officers, might properly be ſeparated in a regulation of *ſuch* fees, as to *which* they ſtood in the *like predicament* as other officers;—taken either way, the reaſoning ſeems unſatisfactory, and therefore we ſhall be obliged to you, if you appear again in favour of the *meaſure*, to defend the whole of it, or fairly give up any part you may eſteem indefenſible. The ſubject of diſpute would be much narrowed too by an explicit declaration, which you will be bound by, that you do or do not juſtify the proclamation as an *implied affirmative allowance* of fees.

"Wherein, you aſk, is the proclamation ſhadowed? "or how doth it appear to have been iſſued with the "ſpecious pretence of publick good?" Becauſe it affects to place the planter and farmer upon an equal footing, and to extend the alternative in tobacco or money to both, on immediate payment, when independently of it, they ſtood in equal circumſtances, and neither of them was under any obligation whatever to pay the officers dues in *tobacco*; and becauſe it iſſued with the "ſpecious pretence" to prevent extortion and oppreſſion, when in truth it gave countenance to both. Be not ſurpriſed at the aſſertion. To demand and take fees of a man for ſervices affected to be, and not really, performed, we hold to be rank extortion. The proclamation eſtabliſhes the old table of fees; under that table the ſecretary charges for recording proceedings which are never recorded, and the commiſſary-general charges for letters of adminiſtration, which he never grants. Is it a queſtion then, whether the proclamation was *ſhadowed*, or iſſued with the *ſpecious pretence* of publick good?

But "how the people came to be alarmed and ſuch "a clamour raiſed againſt a meaſure moſt manifeſtly "calculated to promote their intereſts" you ſay might be diſcloſed by you, but that it did not fall within your province——The people are alarmed indeed! and a very general clamour is raiſed againſt the meaſure. ——If the people are cauſeleſſly alarmed, and the clamour factiouſly raiſed, it would ſeem to be properly within your province, as an advocate for the procla-

(B) 1 *Blackſtone's commentaries*, 141.

(C) 2 *Inſt.* 47.

(D) "*This is a beneficial law, and is conſtrued benignly, and therefore the king cannot ſend any ſubject of England againſt his will to ſerve him out of this realm, for that ſhould be at exile and be ſhould perdere patriam; no, he cannot be ſent againſt his will into* Ireland, *to ſerve the king or his deputy there, becauſe it is out of this realm of England; for if the king might ſend him out of the realm to any place, then under* pretence of ſervice, *as ambaſſador or the like, he might ſend him into the fartheſt part of the world, which, being an exile, is prohibited by this act, &c.——The king commanded Sir Richard Pembrugh to ſerve him in Ireland as his deputy there, which he abſolutely refuſed; whereupon, &c. but he was not upon that reſolution committed to priſon, &c.* becauſe his refuſal was lawful, *and if the refuſal was lawful to ſerve in Ireland, parcel of the king's dominions, a fortiori a refuſal is lawful to ſerve in any foreign country.*" 2 *inſt.* 47, 48.

(E) 2 *inſt.* 56.

mation, not only to ſhew, that it is calculated to promote the intereſts of the people, but alſo to account for the alarm and clamour againſt it, in order to quiet the minds of the people and ſilence diſcord and faction; you poſſibly out of tenderneſs to thoſe "men among us, who have exerted every nerve, employed every faculty of their ſoul, and made uſe of every argument and artifice they are capable of to blind or miſlead the underſtanding, and irritate and enflame the minds of the people," or from your over nice regard to *gentility*, have forborne; as you chuſe to draw a cloud over the alarm and clamour raiſed againſt the meaſure, by which the mind of your reader is left to work up in itſelf the moſt frightful images, and diſcontentedly feed on its groundleſs imaginations, permit us to fill up the blank with the truth of the fact. The people became alarmed, and a general, nearly an univerſal, clamour was made againſt a meaſure manifeſtly calculated to continue the old table of fees WITH ALL THE ABUSES, which had in a courſe of upwards of twenty years by combined intereſt and art crept into the manner of charging under it; which abuſes have been defended ſolely on the *authority* of the regulation, without even alleging, they are ſupportable on original principles of juſtice—The people ſaw their *repreſentatives* ſtruggling againſt the weight of office; the ſcales were equal, the beam ſtood on a ballance—The people ſaw the ſupreme magiſtrate kick the beam, and by his mandate eſtabliſh the very rates rejected by their repreſentatives, aggravated by an inſulting pretence of good to them—The people cannot ſee, nor can it be ſhewn to them by fair and unſophiſticated argument, that this act of power has any rightful or legal foundation—The people cannot ſee, that the general tendency of the *power claimed* can probably or indeed poſſibly tend to their good—On the contrary, they feel, that the charges are made according to the practice, which prevailed under the old regulation; they reflect that government is already in poſſeſſion of (all circumſtances conſidered—) a very ample and, as contended, a rightful and perpetual revenue; nor, if fees may be regulated *without their aſſent*, can they ſee what occaſion government will ever have to apply to them to untie their purſe ſtrings, which are looſened already by another hand; they ſee, if occaſions do not frequently occur, their repreſentatives will not have the weight of a feather, and the juſt ballance deſigned by our conſtitution will be deſtroyed—They ſee, if the right contended for, exiſts, that there is nothing to bound or limit the will of rapacity in the exerciſe of it, and that, therefore, as the former is urged as a precedent to ſupport this proclamation, ſo this may and probably will be urged, as another precedent to ſupport future proclamations, ſtill more oppreſſive and intolerable—The people think their ſituation will be deplorable indeed if they ſhall be obliged to bow to the executive part of government for a proclamation to protect them againſt the oppreſſions and extortions of officers, eſpecially if, as in the preſent caſe, the officers themſelves are to be intruſted with the moulding, forming, and framing of it—Theſe are ſome of the grounds of the alarm, which has been taken. The people ſaw, that after their *former* repreſentatives had unanimouſly reſolved, there was no right in government to rate fees, and had addreſſed the governor accordingly; after *their approbation* of the conduct of their *former* repreſentatives, expreſſed by their new choice of ſuch of them, who were again willing to accept the truſt; after their *new* repreſentatives had unanimouſly reſolved, there was no right in government to iſſue the proclamation;—government was ſo far from taking the conduct of either the people, or their repreſentatives, as an evidence of the ſenſe of the people, that the governor imputed the oppoſition "to the aims of faction, and the rage of diſappointment;" and in his proroguing ſpeech aſſerted, that the proclamation was iſſued by him, "ſolely for the benefit of the people of this province, *by nine tenths of whom* he had *the greateſt reaſon to think it was ſo underſtood.*"—They heard ſome few other favourers of the proclamation, like you, talk of the peoples being *much divided*, and ſome will continue to talk ſo, after every demonſtration to the contrary. And thus the people ſaw, they were not only, "*injured, but inſulted.*" Hence a clamour; it was high time that the clamour ſhould grow louder, and that the people ſhould, by ſome open and ſignificant act fully expreſſive of their minds, remove all falſe impreſſions, which might have been received from their *ſilence*, or any *parafitical tales*, and evince to government, beyond the poſſibility of a doubt, that they generally held the meaſure in the utmoſt deteſtation and abhorrence; but you, good man! it ſeems, took precautionary meaſures for the prevention of *ſuch inſult* to magiſtracy, ſuch *riot*, *anarchy* and *exceſs*; the peoples favours are now withdrawn from you; you now affect to deſpiſe them, though formerly you ſolicited them with the utmoſt earneſtneſs.

Thus Sir, have we endeavoured to follow you in your arguments in defence of the proclamation; whether we have given a ſatisfactory anſwer or not, we cheerfully ſubmit to the judgment of the publick. We have not conſulted the poets for *perſonal reflections* nor diſturbed the aſhes of *Shakeſpear* by an application of his ſentiments to fix ungenerous imputations. It is a common misfortune to be abuſed and miſrepreſented; we expected and have experienced it; but a man muſt indeed want reſolution, who can be impeded in his duty by the ſhafts of calumny. We feel ourſelves happy in the reflection, that whilſt we oppoſe the preſent infraction of the conſtitution, we tread in the ſteps of our forefathers, who in 1739 influenced by a real undiſſembled regard for poſterity and their country, with an intrepid firmneſs, reſiſted a ſimilar arbitrary meaſure. Among that number—but he ſleeps in his grave! Yes, Sir, among that number your venerable father ſtood and pleaded for his country; he was a friend to publick liberty.

We conclude with reminding you of the exhortation of *Junius* to the Engliſh nation "let me exhort and "conjure you never to ſuffer an invaſion of your po-"litical conſtitution, however *minute* the inſtance may "appear, to paſs by, without a determined, perſeve-"ring reſiſtance. One precedent creates another. "They ſoon accumulate, and conſtitute law. What "yeſterday was fact, to-day is doctrine. Examples "are ſuppoſed to juſtify the moſt dangerous mea-"ſures, and where they do not ſuit exactly, the "defect is ſupplied by analogy.—Be aſſured that the "laws, which protect us in our civil rights, grow out "of the conſtitution, and that they muſt fall or "flouriſh with it. This is not the cauſe of *faction*, or "of *party* or of *any individual*, but the *common intereſt* "of every man in Britain."

We are Sir,

Your humble ſervants,

THOMAS JOHNSON, junr.
SAMUEL CHASE,
WILLIAM PACA.

Annapolis, Sept. 3, 1773.

In the 1ſt. p. 3d. col. 1ſt. l. r. affect *inſt. of* effect.

LONDON, June 26.

THE East-India regulating bill is the joint production of Lord North, and adjutant Grey Cooper. Neither the ſollicitor, nor the attorney general were conſulted. Lord Mansfield being aſked by the miniſter, how he would act with regard to it in the houſe of lords, declared if he went thither, he muſt expoſe and throw it out as being contrary to the moſt obvious principles of law and the conſtitution. Lord Shelborne, and his party, however, ſupported it in both houſes, becauſe they want places. Were it not that Lord N. declared he would reſign, and throw the miniſtry into confuſion, the bill would have been rejected; and it was ſuffered to paſs only upon promiſe of it's not being carried into execution, and of having another ſubſtituted in its place next ſeſſion. The publick may depend upon this as fact.

Mr. Stephen Sayre's ſpeech to the livery, on being choſen ſheriff, with alderman Plomer, for the enſuing year.

"*Gentlemen of the livery,*

"It is impoſſible for me to expreſs the feelings of gratitude which predominate in my breaſt upon the preſent occaſion. The honour you have done me calls for a return, which a life entirely devoted to your ſervices only can make. I deem myſelf more highly favoured, becauſe I am well convinced, that nothing under heaven could have induced you to elect me into office of ſheriff, but an opinion of my independence, and ſincere attachment to the publick cauſe. I am independent; I will continue ſo. Upon publick grounds only I will ſtudy to deſerve it. It ſhall be the labour of my life to convince you that inveſting me with your gracious choice, I will ſtrain every nerve in combating our common foe; I will labour aſſiduouſly to ſtop the progreſs of deſpotiſm; at leaſt, I will, by a vigorous exertion of thoſe powers with which you have entruſted me, prevent its making any inroads into this great, this opulent, this free and independent city."

Alderman Plomer has declined ſerving the office ſince his election, ſo there muſt be another ſheriff choſen.

June 28. A correſpondent expreſſes himſelf much pleaſed that his majeſty is extending his reviews beyond the army, and hopes, when the Portſmouth review is over, he will take a review of his own miniſters, as ſome of their manœuvres of late have given great offence to many hearty well-wiſhers of that ſervice.

ANNAPOLIS, SEPTEMBER 9.

On Friday laſt, in the eighteenth year of his age, after a ſhort illneſs, departed this life, Mr. John Magruder, ſon of Mr. Zadock Magruder, a young gentleman, whoſe excellent natural abilities, improved by a liberal education, promiſed in ſome future day, the firſt eminence.

"But all the flatt'ring hopes of youthful bloom,
"Untimely blaſted, wither in the tomb;
"Grac'd with each merit, years like his could boaſt;
"Too ſoon diſcover'd—as too early loſt:
"Yet let not grief pronounce that doom unjuſt,
"Which lays a parent's faireſt hopes in duſt."

That eaſy behaviour, ſweet diſpoſition, affable complacency, and engaging cheerfulneſs, which without panegyrick were peculiar to him, and which ſo much endeared him to all who had the pleaſure of his acquaintance, have juſtly rendered his death univerſally lamented——Yet ye relatives! ceaſe to repine! reflect with the moſt pleaſing ſenſations of joy, that his virtues have gain'd him an inheritance where all temptations are over, and every trouble at an end. And though your fair expectations and promiſing hopes are now nipped, as in the juſt opening bud, yet bleſs that providence that ſees into futurity, and reſt aſſured, that it is done for ſome unforeſeen good. And that with regard to every diſpenſation of the ſupreme diſpoſer of events, "whatever is, is right."

*** *A paraphraſe of the latin poem in our laſt is poſtponed for want of room.*

To be ſold, at publick vendue, at the coffee-houſe, on Friday the 24th inſtant,

SUNDRY SLAVES, the property of Edmund Brice, of London. Alſo a negro wench who has been uſed to houſhold work, and is ſold for no fault but being too fond of liquor.

Mount Vernon, July 15 1773.

THE ſubſcriber, having obtained patents for upwards of 20,000 acres of land, on the Ohio and great Kanhawa, being part of 200,000 acres, granted by proclamation, in 1754. (10,000 of which are ſituated on the banks of the firſt mentioned river, between the mouths of the two Kanhawa's; the remainder on the Great Kanhawa or New River, from the mouth, or near it, upwards in one continued ſurvey) propoſes to divide the ſame into any ſized tenements that may be deſired, and leaſe them upon moderate terms, allowing a reaſonable number of years, rent free; provided that, within the ſpace of two years from next October, three acres for every fifty contained in each lot, and proportionable for a leſſer quantity, ſhall be cleared, fenced, and tilled, and that by or before the time limitted for the commencement of the firſt rent, five acres for every hundred, and a proportionably, as above, ſhall be incloſed and laid down in good graſs for meadow; and moreover, that at leaſt fifty good fruit trees, for every like quantity of land, ſhall be planted on the premiſes.

Any perſons inclinable to ſettle upon theſe lands, may be more fully informed of the terms, by applying to the ſubſcriber, near Alexandria, in Virginia, or, in his abſence, to Mr. Lund Waſhington; and will do well in communicating their intentions before the 1ſt of October next, in order that a ſufficient number of lots may be laid off to anſwer the demand.

As theſe lands are among the firſt which have been ſurveyed, in the part of the country where they lie, it is almoſt needleſs to premiſe, that none can exceed them in luxuriency of ſoil, or convenience of ſituation; all of them lying upon the banks either of the Ohio, or Kanhawa, and abounding in fine fiſh and wild fowl of various kinds, as alſo in moſt excellent meadows, many of which (by the bountiful hand of nature) are in their preſent ſtate almoſt fit for the ſcythe.

From every part of theſe lands water carriage is now had to Fort-Pitt, by an eaſy communication, and from Fort-Pitt up the Monongahela to Red Stone, veſſels of convenient burthen may, and do paſs continually; from whence, by means of Cheat River, and other navigable branches of Monongahela, it is thought the portage to Patowmack may, and will be reduced within the compaſs of a few miles, to the great eaſe and convenience of the ſettlers, in tranſporting the produce of their lands to market; to which may be added that, as patents have now actually paſſed the ſeals, for the ſeveral tracts here offered to be leaſed, ſettlers on them may cultivate and enjoy the land in peace and ſafety, notwithſtanding the unſettled councils, reſpecting a new colony on the Ohio; and as no right money is to be paid for theſe lands, and a quitrent of two ſhillings ſterling a hundred, demandable ſome years hence only, it is highly preſumable that they will always be held upon a more deſirable footing, than where both theſe are laid on with a very heavy hand. It may not be amiſs further to obſerve, that if the ſcheme for eſtabliſhing a new government on the Ohio, in the manner talked of, ſhould ever be effected, theſe muſt be among the moſt valuable lands in it, not only on account of the goodneſs of the ſoil, and the other advantages above enumerated, but from their contiguity to the ſeat of government, which more than probable will be fixed at the mouth of the Great Kanhawa

GEORGE WASHINGTON.

TO BE RENTED,

THE plantation whereon Mr. William Clifton formerly lived, lately poſſeſſed by Mr. Samuel Johnſton, and at preſent in the tenure and occupation of his daughters; this plantation, or farm, is very pleaſantly ſituated on Patowmack river, about five miles below Alexandria, and contains about 200 acres of cleared land, very good for grain of every kind, and tobacco; as alſo one of the largeſt and beſt ſprings on this ſide the Blue Ridge, within twenty yards of the door; it has a front upon the river of near a mile and an half, affording ſeveral good fiſhing landings; one of which only rented laſt ſpring, during the ſhad and herring ſeaſon, for twenty-five pounds; to this belongs a well accuſtomed ferry, upon the moſt direct road leading from Annapolis through Colcheſter, Dumfries, and Fredericksburg to Williamſburg; on the premiſes are a dwelling-houſe, with two brick chimnies and ſeven rooms, a kitchen, ſmoke-houſe, &c.

GEORGE WASHINGTON.

Herring-Bay, September 1, 1773.

To be ſold, at publick vendue, on the premiſſes, on Thurſday the 16th inſtant, if fair, if not the next fair day, for good London bills of exchange, ſterling caſh, or current money,

PART of a tract or parcel of land, called Jerico, lying in Anne-Arundel county, containing about 110 acres; there are on the premiſſes, a convenient dwelling-houſe, new tobacco-houſe, kitchen, corn-houſe, with many other convenient houſes; there is a young apple and peach orchard of the beſt fruit. Time will be given for part of the purchaſe money, on giving bond with ſecurity if required.

2w WILLIAM CARR.

August 30, 1773.

On the 21ſt September next, at George-Town, on Patowmack, will be expoſed to ſale, to the higheſt bidder, for caſh, or bills of exchange on London,

A PARCEL of goods, amount 394 : 9 : 6 coſt; they conſiſt of linen and cotton checks, white linen, cotton, holland, ſilk and cotton gowns, linen, cotton, Barcelona, and other ſilk handkerchiefs, half ell ginghams, damaſcus, half yard cotton cords, black cravats, and ſome other articles. They will be ſold by the piece and dozen. The ſale to begin at 10 o'clock. I have ſome good Madeira wine to ſell by the pipe, hogſhead, and quarter caſk.

THOMAS CONTEE.

WHEREAS the ſubſcriber has obtained patents for near ſix thouſand acres of land, thirteen hundred of which upon the banks of the Ohio, beginning at the ſecond large bottom below the mouth of the little Kanhawa, and four thouſand two hundred about two miles above Col. George Waſhington's ten thouſand acre tract upon the banks of the great Kanhawa; he propoſes to divide the ſame into ſuitable tenements as may be deſired, and leaſe them upon moderate terms, allowing a reaſonable number of years rent free provided within the ſpace of two years from the laſt of October next, three acres for every fifty contained in each lot, and proportionably for a leſſer quantity ſhall be cleared, fenced, and tilled; and that by or before the commencement of the firſt rent, five acres for every hundred, and proportionably as above ſhall be incloſed and laid down in good graſs for meadow, and that at leaſt fifty good fruit trees ſhall be planted on the premiſſes. Any perſon inclinable to ſettle on thoſe lands, may be more fully informed, by applying to the ſubſcriber near Port-Tobacco, and would do well in communicating their intentions before the firſt of November next, that a ſufficient number of lots may be laid off to anſwer the demand. The land is well watered and very rich, abounding with fine fiſh and wild fowl of various kinds.

5w JAMES CRAIK.

The ſubſcribers have for ſale, at the late dwelling houſe of doctor Henry Jerningham, of St. Mary's county, deceaſed,

A VERY large and general aſſortment of medicines, and a variety of elegant ſhop furniture, an electrical machine with the apparatus compleat, ſundry books, an excellent violin and muſick books, a ſingle chaiſe and harneſs for one horſe, two large looking glaſſes, one ſet of flower ſeaſons, fine prints by Hogarth, and many other articles too tedious to mention.

CATHARINE JERNINGHAM,
5 w FRANCES JERNINGHAM.

FREDERICK-TOWN RACES.

ON Wedneſday the 20th of October will be run for, a ſubſcription purſe of FORTY POUNDS, free for any horſe, mare or gelding, four years old to carry 7 ſtone 7 lb. five years old 8 ſtone, ſix years old 8 ſtone 7 lb. and aged 9 ſtone.

On THURSDAY the 21ſt.

A purſe of TWENTY-FIVE POUNDS, free for any horſe, mare or gelding, (except the winning horſe the preceding day) to carry weight for age and weight for ſize, according to the rules of racing. Judges will be appointed each day to determine all diſputes that may ariſe. To ſtart each day at 11 o'clock.

N. B. No horſe that William Iſams is concerned with will be allowed to ſtart for either day.

IMPORTED in the Polly, Capt. Kilty, and now in the warehouſe belonging to Charles Carroll, Eſq; barriſter, a caſe No. 1, and a caſk No. 2, both marked I^H, with the figure 8 on the top of the ſecond I. The owner may have them again on producing the bill of lading.

Baltimore, Auguſt 31, 1773.

A PERSON properly qualified, and who can come well recommended, to do the buſineſs of a county clerk, will meet with good encouragement on application to,

3w ALEXANDER LAWSON.

Clement's-bay, June 6, 1773.

RAN away from the ſubſcriber, living in St. Mary's county, on the 26th of April laſt, a likely dark mulatto woman called Sarah, about 5 feet 2 or 3 inches high, and well made: had on when ſhe went away, an oſnabrig ſhift, petticoat, apron, and cotton jacket, but 'tis probable ſhe may change her cloaths; ſhe was ſome time ago in the neighbourhood of Chaptico and Newport, and paſſed for a free woman by the name of Betty Adams, and it is likely ſhe may change her name again. Whoever brings the ſaid negro to her maſter, or ſecures her ſo that he may get her again, ſhall receive if taken in the province thirty ſhilling, or if out three pounds reward.

4 w PHILIP FORD.

THE Subſcriber will lump off the goods he has at his ſtore in the city of Annapolis, upon very reaſonable terms, for ready tobacco, received at any warehouſe in the province.

tf ROBERT BUCHANAN.

August 30, 1773.

I HEREBY forewarn all perſons from ſhooting on my lands, on any pretence whatever.

3 w DAVID KERR.

TO BE SOLD AT PRIME COST,

A NEAT eight day clock with a fine mahogany caſe, to be ſeen at Mr. Aikman's ſtore any time of the day.

Anne-Arundel county, ſt. Auguſt 14, 1773.

ORDERED, by the Juſtices of the county court, that publick notice be given in the Maryland gazette, that they intend to apply to the next general aſſembly for an act of aſſembly to enable them to levy a ſum of tobacco on the taxable inhabitants of the ſaid county, for the building and erecting a court-houſe for the uſe of the ſaid county,

Signed per order,

JOHN BRICE, clerk.

Auguſt 31, 1773.

STRAY'D or ſtolen out of the ſubſcriber's lot late laſt night, a large light ſtrawberry roan horſe, with a thin mane and ſwitch tail, his noſe and face are mealy, is ſhod before, his brand unknown; his ears in particular are very dark, paces, trots and gallops. Whoever will ſecure ſaid horſe and give notice to the ſubſcriber, ſhall have if taken in Anne Arundel county ten ſhillings, and if in any other county one piſtole, and if out of the province three pounds; and if ſtolen and the thief convicted thereof five pounds.

tf WILLIAM REYNOLDS.

July 13, 1773

To be ſold at publick vendue, on Friday the 15th of October next, at the late dwelling-houſe of Samuel Wickham, of Frederick county, deceaſed, viz.

A TRACT of land containing twenty-ſix acres, another tract containing one hundred acres, adjoining the other, both lying on Monockacy creek, whereon are two framed dwelling-houſes, about fifty acres of cleared land, and ſome in good timothy graſs; alſo one other tract, containing one hundred acres, lying on Fiſhing creek, in the county aforeſaid; whereon is a good dwelling-houſe, ſome out houſes, about forty acres of cleared land, and ſeveral acres of timothy graſs: there is on the ſaid land, a convenient place for building a griſt-mill.—Alſo all perſons indebted to the eſtate of the aboveſaid Wickham, are deſired to make immediate payment, and thoſe who have any juſt claims againſt ſaid eſtate, are requeſted to bring in their accounts regularly proved, that they may be adjuſted, by

JOSEPH WOOD, junr. executor.

JUST IMPORTED,

In the Caroline, Capt. Lynch, from London, and to be ſold, by the ſubſcribers, at their ſtore on the dock, in Annapolis, on very reaſonable terms, for caſh or ſhort credit,

A CHOICE and general aſſortment of European and Eaſt-India Goods.

WALLACE DAVIDSON and JOHNSON.

COMMITTED to the jail of Charles county as a runaway, a negro man who calls himſelf Frank, and ſays he is the property of William Jetty, of Mecklinburg county in Virginia; he is about five feet five inches high, a likely well made young fellow, his face much ſcarified, particularly his forehead, occaſioned, as he ſays, by his being burnt when a child: Has on and with him, a good oſnabrig ſhirt, a pair of old died jeans breeches, old ſhoes and ſtockings, a felt hat almoſt new, and a woman's oſnabrig petticoat, which he ſays he took from his ſweet-heart by way of a love memorandum. His maſter is deſired to take him away and pay charges, to

8 w Wm. HANSON, depy. ſheriff.

June 16, 1773.

COMMITTED to the jail of Charles county as a runaway, a negro man, who calls himſelf Simon Piper, and ſays he belongs to John Hunter, about five miles beyond Frederick-town in Virginia. He is a likely fellow, about 5 feet 4 inches high, well ſet, of a yellow complexion, the little finger on his left hand crooked; has on, and with him, an old light coloured broad cloth coat, trimmed with ſilver baſket buttons, an old jacket of the ſame with the back parts of ſhaloon, a pair of black ſerge denim breeches and a pair of oſnabrig trouſers over them, an old fine white ſhirt and an oſnabrig ditto over it, and an old caſter hat. The owner of ſaid negro is deſired to take him away and pay charges to

8w WILLIAM HANSON, deputy ſheriff.

Annapolis, June 21, 1773.

HIS excellency the governor having taken out letters teſtamentary on the eſtate of the late lord proprietary, within this province——Notice is hereby given to all perſons who have become purchaſers of manor or reſerved lands, and have not ſtrictly complied with the terms of ſale; that if they do not return certificates and make immediate payment, they may depend that no indulgence can be granted, as the truſtees are determined to cloſe the accounts and make a final ſettlement without loſs of time.

Signed per order,

JOHN CLAPHAM.

Bladensburg June 14, 1773.

LAND to be sold by publick sale, on the Wednesday of November court next, at 2 o'clock, before the house wherein Mrs. Charleton now dwells at Frederick-town, viz.

A valuable well improved tract of 310 acres, now occupied by William Hilliary, about seven miles below the said town, which was conveyed by said Hilliary to me by a deed which is recorded in Frederick county land record book, I, folio 1044, February 18, 1765.

The bidder who shall pay down the greatest sum of money on the day aforesaid, shall have a conveyance of the right now vested in

RICHARD HENDERSON.

July 7, 1773.

WILLIAM AIKMAN,

Bookseller and stationer in West-street Annapolis,

ON Monday last opened his circulating library consisting of above 12 hundred volumes on the most useful sciences, history, poetry, agriculture, voyages, travels, miscellanies, plays, with all the most approved of novels, magazines and other books of entertainment, to be lent out to read at one guinea per year, 20 shillings for six months, 12 shillings per quarter, 5 shillings per month, or 3 pence per night. Readers at any distance from Annapolis to be allowed two books at a time. As the library will be of real utility to the publick, and as the proprietor will take care to have it supplied with all the new publications of merit from Britain so soon as published, he hopes it will meet with encouragement from the friends of literature.

He has likewise imported a large assortment of most of the books in the library for sale. The best editions printed on a fine paper, handsome type and neatly bound. All different kinds of gilt and plain, cut and uncut writing paper, gilt, plain and engraved message cards, turky pocket books and letter cases, folio and quarto paper books, ruled and unruled, memorandum books of all different sizes, wax, wafers, pens, penknives, pencils, ivory solders and all different kinds of stationary, with an assortment of jewellery, to be sold at the London prices for cash only.

Paper ruled and bound for accounts, all kinds of books bound and re-bound in the neatest manner and at the most reasonble rates, by

WILLIAM AIKMAN.

N. B. Catalogues both of the library and the books he has for sale to be had at his shop.

TO BE SOLD, BY THE SUSCRIBBER,

THREE hundred acres of patent land, and about thirty acres leased land for ninety-nine years, all joined together, lying in Baltimore county, about ten miles from Bush-Town, on the main road that goes from Bush to York-Town, Pennsylvania, about twelve miles from Joppa, and about eighteen from Baltimore-Town; the land is good, and will suit either for farming, or planting tobacco; it is likewise well situated for a tavern or store, as it lies on the main road that all the waggons from the upper mills go to Baltimore-Town, and joins the land of Mr. Abraham Whitaker, where he now lives, who is building and letting lots to several people for keeping taverns and stores; it is well adapted for such business, as it lies in the heart of a settlement where there are large quantities of wheat made, and many merchant mills convenient; there are on the land two small plantations; on one of them a small dwelling house in middling good repair, a good barn, and a large apple orchard of good fruit, and bears well; on the other place there is a middling good large dwelling house in pretty good repair, and other convenient houses, and a small apple orchard of good fruit; there likewise may be made meadow enough to support the place with hay, without much trouble. Any person or persons inclinable to purchase, may see the above land by applying to Mr. Abraham Whitaker, or the subscriber.——Likewise to be sold, a large two story brick dwelling house in the town of Joppa, on a water lot, the house is almost new, has four rooms on a floor, and eight fire places, cellars under the whole, and a neat store made of one of the rooms, which is quite private from the other part of the house, and now rented to Walter Tolley, jun. Esq; Any person inclinable to purchase the aforesaid house and lot, may know the terms by applying to the subscriber living in the fork of Gunpowder, near Joppa. The title of the whole indisputable.

JOHN HAMOND DORSEY.

Annapolis, August 14, 1773.

JERVIS BURFORD AND DAVID JONES,

TAILORS and HABIT-MAKERS, from LONDON,

TAKE this method to acquaint the publick, that they have opened shop at the house of Mrs. Maw, near the church, where they intend carrying on their business in all its branches, hoping that, by a strict adherence and constant endeavour to give satisfaction, they will merit the approbation of all ladies and gentlemen who may think proper to favour them with their custom; and as ability in tradesmen is generally deemed a sufficient recommendation, they flatter themselves their merit will find access to the good will of the publick, and all favours grounded on that principle they will most gratefully acknowledge. w4

ANNAPOLIS RACES.

On TUESDAY the 28th of Sept. will be run for,

THE JOCKEY CLUB PURSE of ONE HUNDRED GUINEAS, free only for Horses &c. belonging to the Members of the Club.

On WEDNESDAY the 29th.

The CITY PURSE of FIFTY POUNDS, GIVE AND TAKE. Aged Horses 14 Hands high to carry 9 Stone, allowing 7lb. for every *Year* under Age 5 and 7lb. for every *Inch* under 14 Hands; but for every Inch above 14 Hands, to carry 7lb. extraordinary. Heats 3 Miles each.

On THURSDAY the 30th.

The CITY PURSE of FIFTY POUNDS, free for Four and Three Years old; Four Years to carry 8 Stone, Three Years to carry 7 Stone, allowing 3lb. for Fillies. Heats 2 Miles each.

On FRIDAY the 1st of October.

The THEATRICAL PURSE of FIFTY POUNDS, free for any Horse, Mare, or Gelding, carrying 9 Stone. Heats 4 Miles each.

There will be a Sweep-stakes on Monday the 27th of September, between

William Fitzhugh, Esquire's gray Filly, by Fearnought.

Benjamin Ogle, Esquire's gray Filly, by Othello.

Daniel Heath, Esquire's gray Filly, by Traveller.

The winning Horse each day is excluded starting for any of the other Plates.

Subscribers of Three Pounds or upwards, may enter free for each, or all of the Three last Days Plates. Non-Subscribers to pay Two Guineas Entrance each Day.

The Horses intended to run for the Two last Days Sport, must be entered with the Clerk of the Course, on Saturday the 25th of Sept. any Time before Twelve at Noon; and the Horses for the give and take Plate, must be entered and measured between the Hours of Three and Six in the Afternoon of the same day, or pay, should they start for any of those plates, double Entrance at the Post, if the Property of a Non-Subscriber, Three Pounds.

Subscribers to the Plates, and the Gentlemen who have Horses to start for the Jockey Club Purse, are desired to enter them the same Day, that Lists may be made out and published. Certificates of their Ages must be then produced.

The Horses are to start each Day precisely at Eleven o'Clock. The winning Horse each Day, to pay a Guinea to the Clerk of the Course for Weights, and Scales. Judges to be appointed by the Stewards.

Assemblies as usual, on Tuesday and Friday.

LLOYD DULANY, } Esqrs. Stewards.
RICHARD SPRIGG, }

For the Encouragement of the Market, and the better Entertainment of the Company at Annapolis during the Races, the JOCKEY CLUB have directed their Secretary to publish the following Premiums, viz.

TEN POUNDS CURRENCY

For the largest and fattest Beef that shall be brought to Market, and sold at or under Six-pence per Pound, The Four Quarters not to weigh less than 700 Pounds.

ONE GUINEA.

For the largest and fattest Weather, above Four Years old.

THREE POUNDS CURRENCY

To the person who brings to Annapolis during the Race Week the greatest Quantity of the largest and best marketable Fish, and retails the same at the usual Prices. Proof of which must be made to the Satisfaction of the Club at the End of the Week.

Persons proposing to become Candidates for the Premiums, are to apply to the Secretary of the JOCKEY CLUB.

WILLIAM EDDIS, Secretary.

RAN away from the subscriber, living in Charles county, a servant lad, called Hooper Bennett, about 19 years of age, slender make, about 5 feet 3 inches high, light coloured hair, which he generally wears in a slovingly manner, pale sallow complexion, appears to have had the fever and ague, speaks quick, and calls himself a barber and hair-dresser; had on, when he went away, a brown short skirted coat, red waistcoat, and olive coloured velvet breeches, though it is supposed he may have now changed his dress: he was seen, about five weeks ago, at Lyon's-creek, in Calvert county, and I do imagine he is now either in that or the county of St. Mary's. Whoever brings said servant to the subscriber, shall have a reward of forty shillings, paid by

RICHARD LEE.

ANY Person wanting Searches made in the Rentals for the Western Shore of this Province may apply to

J. CLAPHAM.

THE subscriber has a compleat boat, suitable for carrying of horses and foot passengers across the bay to Cook's point, in Dorchester County, or to Oxford, Cambridge, or Wye-river; man and horse to Dorchester county, 15*s.* to Cambridge, 2:2:6. to Oxford, 20*s.* to Wye-river, 2:5:0. The said boat is to be at Cook's-point the second Monday in every month till twelve o'clock, to wait for those that may want to cross to Calvert county, and oftener, if notice is given to the skipper of said boat. She is always ready to receive passengers at any time at the subscriber's landing, to carry to any of the aforesaid places.

w3 HILLARY WILSON.

August 21, 1773.

STOLEN from the subscriber's pasture a week ago, about five miles from Queen-Anne, a bay mare, about 14 hands high, branded on the near buttock I M not very perceivable, about five years old, paces, bushy mane, one white hind foot. ——Twenty shillings reward will be given for bringing home the mare, and five pounds for the thief upon conviction, paid by

w3 JAMES MULLIKIN.

August 23, 1773.

STRAYED or stolen from the subscriber the 8th inst. living near Mr. Stephen Steward's, in the Swamp, a sorrel horse, seven years old last May, betwixt 13 and 14 hands high, branded RG on one of his buttocks, has a blaze on his face which runs into one of his nostrils, paces and gallops. Whoever takes up the said horse and brings him home shall have four dollars reward, paid by

w2 JOHN PARSONS.

August 16, 1773.

RAN away yesterday morning from the subscriber, living on Seneca, Frederick county, near the Widow Dowden's tavern, a convict servant man, named John Gardner, about 24 years of age, and about 5 feet 8 or 9 inches high, dark complexion, gray eyes, is very talkative, and has a very bad scald head: Had on and took with him, old felt hat, osnabrig shirt much patched, old striped linsy jacket, white drab breeches, cotton stockings, and good shoes: he pretends to act the slight of hand, so I imagine he will pass for a show-man, and probably may forge a pass. Whoever takes up the said servant, and secures him, so that his master gets him again, shall receive twenty shillings reward, besides what the law allows, and reasonable charges if brought home, paid by

w3 GREENBURY GRIFFITH.

Prince-George's county, August 12, 1773.

To be sold to the highest bidder, on the twenty-second of September next,

A PARCEL of land supposed to contain about 300 acres, about seven miles below Piscataway, and about two from Patowmack-river, for sterling or current money. The sale to be on the premises, at the house where John Holly now lives as a tenant, who will shew the land to any person who shall incline to view the same before the day of sale, when the exact quantity will be made out, by

w4 ZACHARIAH MACCUBBIN.

July 22, 1773.

RAN away from the subscriber, living in Philadelphia, on the 24th day of april last, a negro man, named Jack, about 22 years of age, about 5 feet 10 or 11 inches high, has been used to the still, he formerly belonged to Mr. Zephaniah Bond, in St. Mary's county, in Maryland. He stole and took with him, about 10 pounds currency, and was seen some time in the month of May last, at the house of Mr. Philip Briscoe, in Charles county, where his father and mother live: had on, when there, a blue broadcloth coat, lapelled, a red flannel jacket lined with white flannel, black plush, or cotton velvet breeches, ribbed worsted stockings, and channel pumps; a fine fashionable hat, two or three white shirts. It is supposed he has a forged pass, as he travelled from Philadelphia to Charles county without being taken up. Whoever will deliver the said negro to Mr. William Faris, or to Mr. John Fry, in Annapolis, shall receive the sum of ten pounds Pennsylvania currency reward, or fifteen pounds like money, if brought to me at Philadelphia. w5 JOHN ZELLER.

N. B. He has a scar under one of his eyes——All masters of vessels are forewarned carrying him off at their peril.

THERE is in the possession of Francis M'Daniel, living at Mr. Caleb Dorsey's Elk-Ridge, a stray bay horse, about 13 hands and a half high, a star in his forehead, two saddle spots, one on each side, has a small bell and bell collar on, paces, trots, and gallops.

The owner may have him again, proving property and paying charges. w3

THERE is at the plantation of Rhesa Todd, on Elk-Ridge, in Anne-Arundel county, a stray black mare, about 13 hands high, neither docked nor branded, trots and gallops.

The owner may have her again, proving property and paying charges. w3

ANNAPOLIS: Printed by ANNE CATHARINE GREEN and SON.